IN THE

Supreme Court of the United States

October Term 1979

No. 79-75

LEON W. KNIGHT, ET AL.,
Petitioners,

vs.

THE HONORABLE GERALD W. HEANEY, UNITED STATES CIRCUIT JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND EARL R. LARSON AND DONALD D. ALSOP, UNITED STATES DISTRICT JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA,
Respondents.

DEFENDANT LABOR ORGANIZATIONS' BRIEF IN OPPOSITION TO THE MOTION FOR LEAVE TO FILE PETITION FOR EXTRAORDINARY WRIT DIRECTED TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

and

PETITION FOR EXTRAORDINARY WRIT

ERIC R. MILLER
KEITH E. GOODWIN
DONALD W. SELZER, JR.
MARK D. ANDERSON
OPPENHEIMER, WOLFF, FOSTER, SHEPARD AND DONNELLY
1700 First National Bank Building
Saint Paul, MN 55101
Attorneys for Defendant Labor Organizations

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

TABLE OF CONTENTS

APPENDIX INDEX

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

October Term 1979

No. ———

LEON W. KNIGHT, ET AL.,

Petitioners,

vs.

THE HONORABLE GERALD W. HEANEY, UNITED STATES CIRCUIT JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND EARL R. LARSON AND DONALD D. ALSOP, UNITED STATES DISTRICT JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA,

Respondents.

DEFENDANT LABOR ORGANIZATIONS' BRIEF IN OPPOSITION TO THE MOTION FOR LEAVE TO FILE PETITION FOR EXTRAORDINARY WRIT DIRECTED TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

and

PETITION FOR EXTRAORDINARY WRIT

STATEMENT OF THE CASE

On December 19, 1974, twenty Minnesota Community College Faculty members, by and with the assistance of the National Right to Work Legal Defense Foundation, filed the present lawsuit challenging the constitutionality of public sector collective bargaining in Minnesota under the First, Fifth, Ninth, Tenth, Eleventh, Thirteenth and Fourteenth Amendments to the United States Constitution. Named as defendants were the Minnesota Community College Faculty Association ("MCCFA"), the Minnesota Education Association ("MEA"), the National Education Association ("NEA"), the Independent Minnesota Political Action Committee for Education ("IMPACE"), officers and employees of the aforementioned organizations (this group of defendants is referred to as the "defendant labor organizations"), and several public officials of the State of Minnesota. Plaintiffs requested the convention of a three-judge court pursuant to 28 U.S.C. §2281.

The initial stages of the lawsuit dealt with issues of abstention and whether it was appropriate to convene a three-judge court to consider plaintiffs' allegations. On May 17, 1976, the Court of Appeals for the Eighth Circuit ordered the convention of a three-judge court and the Honorable Gerald W. Heaney, Earl R. Larson and Donald D. Alsop were subsequently impaneled to constitute that Court.

In an effort to provide structure and guidance, the three-judge court, through Judge Alsop, periodically communicated with the parties to monitor the progress of the case. Consistent with this practice, the Court issued an order on September 25, 1978 scheduling a pretrial hearing for October 13, 1978, for the purpose of determining the current status of discovery and to schedule preparation for trial. The October 16, 1978

order closing discovery was the direct product of the October 13 hearing and the Court's satisfaction that such order was appropriate given the breadth of discovery completed and the explicit representations by plaintiffs' counsel that they should have no difficulty completing discovery by mid-December, 1978.

On December 30, 1978, plaintiffs moved for rescission of the Disrict Court's October 13 discovery deadline and requested that sanctions be imposed on defendant labor organizations. The Court's surprise was understandable when, one day before the discovery deadline, plaintiffs served notice that they were charging defendants with a massive conspiracy to thwart their discovery rights and submitted for the Court's review a 266 page brief, with 10 volumes of supporting data, all of which weighed 34 pounds. It was as if the pretrial hearing of October 13, 1978, which was designed to and did in fact address discovery matters, never occurred.

It was with this background that Judge Alsop commented on the February 2, 1979, hearing to the following effect:

> I can tell you that I have gone back and reviewed my own correspondence in connection with this case and I have reviewed the memorandum that I submitted to Judges Heaney and Larson following our October 13 session and the order that ensued from that session.
>
> There is no way to describe the reaction, I guess, to what has transpired since then in the sense that obviously the case has taken an entirely different turn based upon everything I have tried to accomplish over the last three years. . . .

Petitioners' appendices, (hereinafter "Pet. A.") page 460.

I. PETITIONERS SHOULD ADDRESS THEIR PETITION FOR EXTRAORDINARY WRIT TO THE COURT OF APPEALS.

Petitioners have requested leave to petition this Court for a writ in the nature of mandamus to compel the three-judge District Court to reopen discovery. They have addressed their petition to this Court on the theory that it has exclusive jurisdiction to consider the petition. Petitioners' theory, however, is erroneous. Concurrent jurisdiction to consider this petition lies with the Court of Appeals for the Eighth Circuit. Thus, as set forth below, while any court properly considering this petition should deny it on its merits, this Court should direct plaintiffs to pursue their remedies, if any, in the Court of Appeals for the Eighth Circuit.

A. This Court and the Court of Appeals have concurrent jurisdiction to consider petitioners' request for extraordinary writ.

The power to issue extraordinary writs is a function of appellate jurisdiction. The All Writs Act, 28 U.S.C. §1651, provides:

> (a) The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

In the circumstances present here, the power to issue the writ requested by petitioners lies with all courts possessing appellate jurisdiction that could arguably be aided by issuing the writ. In other words, this petition could be addressed to any court possessing appellate jurisdiction.

In this instance the Court of Appeals possesses immediate appellate jurisdiction over the issues raised by petitioners; the Supreme Court possesses ultimate appellate jurisdiction.

Petitioners assert that under 28 U.S.C. §1253 (1970) this Court has *exclusive* appellate jurisdiction over the merits of the constitutional claims for injunctive relief and that therefore it also has *exclusive* jurisdiction under the All Writs Act, 28 U.S.C. §1651 (1970), to hear petitions for extraordinary writs. However, under 28 U.S.C. §1253, direct appeal lies to this Court only in narrowly prescribed circumstances, and in all other cases lies to the Court of Appeals. Section 1253 provides:

> Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

In accordance with the "overriding policy . . . of minimizing [this Court's] mandatory docket," this statute has been construed narrowly. *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 98 (1974); *MTM, Inc. v. Baxley*, 420 U.S. 799, 804 (1975). This narrow construction has taken two forms. First, the right of direct appeal to this Court is restricted to those orders granting or denying injunctive relief. *Rockefeller v. Catholic Medical Center*, 397 U.S. 820 (1970); *Goldstein v. Cox*, 396 U.S. 471 (1970). Second, a direct appeal to this Court lies "only where such order rests upon a resolution of the merits of the constitutional claim presented below." *MTM, Inc. v. Baxley*, 420 U.S. 799, 804 (1975) (emphasis

added).[1] These limitations on the right of direct appeal to this Court can be rephrased as: a direct appeal is appropriate only where the ruling below involved the granting or denial of an injunction on the constitutional questions which formed the basis for the convention of the three-judge District Court. In all other circumstances, direct appeal lies only to the Court of Appeals.

The denial of the motion to reopen discovery involves neither a grant or denial of injunctive relief nor a decision on the underlying constitutional question. Direct appellate jurisdiction, therefore, lies only with the Court of Appeals for the Eighth Circuit. The Ninth Circuit Court of Appeals reached this conclusion when it assumed jurisdiction over a petition for a writ of mandamus to vacate a three-judge District Court's order compelling discovery. *Breed v. United States District Court for the Northern District of California*, 542 F.2d 1114 (9th Cir. 1976). That Court concluded that *MTM* means "that [the Circuit Court] has jurisdiction over appeals from appealable orders of three-judge district courts that do not resolve the merits of the constitutional claim presented." This petition is indistinguishable from that involved in *Breed*.

---

[1] On this basis direct appeal was held to lie only to the Circuit Court in the following cases: *MTM, Inc. v. Baxley*, 420 U.S. 799 (1975) (abstention based on *Younger v. Harris*, 401 U.S. 37 (1970)); *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90 (1974) (dismissal based on lack of standing); *McCarthy v. Briscoe*, 429 U.S. 1316 (1976) (Powell, J., acting as Circuit Judge) (denial of injunction on grounds of laches); *United States v. Louisiana*, 543 F.2d 1125 (5th Cir. 1976) (refusal to permit intervention); *Jagnandan v. Giles*, 538 F.2d 1166 (5th Cir. 1976), *cert. denied*, 432 U.S. 910 (1977) (an injunction was awarded, but a refusal to award damages based on Eleventh Amendment grounds was appealed); *Sea Ranch Assn. v. California Coastal Zone Conservation Commissions*, 537 F.2d 1058 (9th Cir. 1976), and *Roe v. Rampton*, 535 F.2d 1219 (10th Cir. 1976) (dismissals based on abstention); *Valentino v. Howlett*, 528 F.2d 975 (7th Cir. 1976) (dismissal based on mootness).

While this Court has no direct appellate jurisdiction over the questions raised by petitioners, by virtue of its ultimate power of review, it retains jurisdiction to issue extraordinary writs. *Ex parte Republic of Peru*, 318 U.S. 578, 584-85 (1943); *Ex parte United States*, 287 U.S. 241, 246 (1932). However, since the Court of Appeals possesses direct appellate jurisdiction, that Court also possesses jurisdiction to consider petitions for such writs.[2] *See Breed, supra.*

B. Petitioners have raised no issue appropriate for direct review by the Court.

Although this Court has the power to issue the writ requested by petitioners, the issuance of such a writ "is not a matter of right but of sound discretion sparingly exercised." U.S. Sup. Ct. Rule 30. Where the Court of Appeals possesses concurrent jurisdiction to issue such writs, this Court's discretion is rarely exercised.

---

[2] Petitioners rely on several cases (Petition at 4 n.5) to support their contention that this Court "has exclusive jurisdiction . . . to hear their Petition. . . ." The cited cases are inapposite.

The bulk of these cases, *e.g., Tidewater Oil Co. v. United States*, 409 U.S. 151 (1972); *United States Alkali Export Assn., Inc. v. United States*, 325 U.S. 196 (1945), involved anti-trust cases for which appellate jurisdiction was governed by §2 of the Expediting Act, 15 U.S.C. §29, which then provided: "An appeal from the final judgment of the district court will lie only to the Supreme Court." (The statute has since been amended significantly, Pub. L. 93-528, §4, 88 Stat. 1708, December 12, 1974.) This provision was construed so as to limit appellate jurisdiction in these cases *only* to the Supreme Court and *only* from final judgments. *Tidewater Oil Co.*, 409 U.S. at 164-65, 173-74. Consequently, any application for a common law writ based on the aid of appellate jurisdiction necessarily had to be to this Court. *Alkali Export*, 325 U.S. at 202.

Petitioners' application, on the other hand springs from a case for which appellate jurisdiction is based on 28 U.S.C. §1253. In such cases, this Court's appellate jurisdiction is not exclusive. The Court of Appeals possess appellate jurisdiction in a variety of circumstances. *MTM, Inc. v. Baxley*, 420 U.S. 799 (1975). Petitioners' reliance on Expediting Act cases, therefore, is misplaced.

> "[A]pplication for the writ must ordinarily be made to the intermediate appellate court, and made to this Court as the court of ultimate review only in . . . exceptional cases." *Ex parte United States*, 287 U.S. at 248, quoted in *Ex parte Republic of Peru*, 318 U.S. at 585.

Such exceptional cases involve questions "of public importance . . . or [questions] of such a nature that it is peculiarly appropriate that such action by this Court should be taken." *Id.*

Petitioners' claim that discovery in this case should be reopened fails to meet this standard. This case involves a settled question of judicial administration as set forth in section II below and not an undecided question of public importance. By comparison, in the past, questions of sufficient public importance have been held to include judicial interference in orderly criminal processes and court action affecting foreign relations. *Ex parte United States, supra*, (District Court refused to issue arrest warrant after presentment of grand jury indictment "fair on its face"); *Ex parte Republic of Peru, supra*, (District Court continued to exercise *in rem* jurisdiction over Peruvian steamship after State Department had recognized a claim of immunity). Petitioners raise no issue of similar importance. Nor do petitioners raise issues peculiarly appropriate for direct review by this Court. Circuit Courts have previously considered similar petitions, even in cases involving three-judge District Courts. *See Breed, supra*. Nothing indicates that they are incapable of doing so here.[3]

---

[3] Petitioners have failed to comply with Supreme Court Rule 31 in that they have not "set forth particularity" why the relief sought is not available in any other court. Aside from a cursory and inaccurate assertion that this Court has exclusive appellate jurisdiction and, therefore, exclusive jurisdiction to consider the petition, (see Petition at 3-4) petitioners have not explained why the requested relief is not available from the Circuit Court.

II. PETITIONERS HAVE FAILED TO MEET THEIR BURDEN OF DEMONSTRATING A USURPATION OF POWER BY THE THREE-JUDGE DISTRICT COURT.

A. Plaintiffs must demonstrate a usurpation of power by the District Court.

This Court has recently restated the standards for considering a petition for a writ of mandamus. In *Kerr v. United States District Court*, 426 U.S. 394 (1976), petitioners were dissatisfied with a discovery ruling by the district court and petitioned the Court of Appeals for the Ninth Circuit for a writ of mandamus. The Court of Appeals refused to issue the writ and petitioners sought review in this Court, which affirmed the Court of Appeals' denial.

> The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations. [cites omitted]
>
> . . .
>
> And, while we have not limited the use of mandamus by an unduly narrow and technical understanding of what constitutes a matter of "jurisdiction," [cites omitted] the fact still remains that "only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy." Ibid.
>
> Our treatment of mandamus within the federal court system as an extraordinary remedy is not without good reason. As we have recognized before, mandamus actions such as the one involved in the instant case "have the unfortunate consequence of making the [district court] judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants [appearing] before him" in the underlying case. [cites omitted] More

> importantly, particularly in an era of excessively crowded lower court dockets, it is in the interest of the fair and prompt administration of justice to discourage piecemeal litigation. It has been Congress' determination since the Judiciary Act of 1789 that as a general rule "appellate review should be postponed . . . until after final judgment has been rendered by the trial court." [cites omitted] A judicial readiness to issue the writ of mandamus in anything less than an extraordinary situation would run the real risk of defeating the very policies sought to be furthered by that judgment of Congress.

426 U.S. at 402-403, footnote omitted.

Accord: *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655 (1978).

B. A United States District Court has broad discretionary powers to manage its docket.

Plaintiffs' argument that a district court usurps power when it establishes discovery deadlines is premised on a fundamental misapprehension of the inherent power of the federal bench to control its docket and is contrary to the collective authority of the Federal Rules of Civil Procedure, the Manual for Complex Litigation and judicial precedent.[4]

The Federal Rules of Civil Procedure are to be "construed to secure the just, speedy and inexpensive determination of

---

[4] The appropriateness of the Discovery Order entered by the three-judge Court in this case, given the length of the discovery period, the breadth of discovery obtained and the representations by plaintiffs' counsel on October 13, 1978 regarding the amount of time necessary to complete discovery, will be discussed *infra*. This section of the brief is limited to an analysis of the District Court's power and discretion to enter an order establishing discovery deadlines.

every action." Federal Rules of Civil Procedure, Rule 1. Rule 16 of the same rules provides district courts with the authority to hold pretrial hearings and to consider and rule on such "matters as may aid in the disposition of the action." Furthermore, Rule 83 allows district courts to promulgate rules of practice in their respective districts which are not inconsistent with the federal rules. Pursuant to that authority the judges for the District of Minnesota have promulgated local Rule 3(a) (Rule 4 prior to January 1, 1979) which provides that a judge in Minnesota may "prescribe such pretrial and discovery procedure as he may determine appropriate." A. 120.

In addition to the authority in the Federal Rules of Civil Procedure, as set forth above, the Manual for Complex Litigation strongly encourages federal judges to exercise judicial control over complex litigation, stating:

> The trial judge has the undoubted power and inescapable duty to control the processing of a case from the time it is filed. In the complex case, the judge must assume an active role in managing all steps of the proceedings. . . .
>
> . . .
>
> A crucial step in the first phase of judicial management of the complex case is the prompt entry of an order initiating a pretrial conference to provide early and efficient schedule of pretrial discovery and preparation.

Manual for Complex Litigation (1977) §1.10, page 15.

> At the second pretrial conference, a schedule for filing all remaining discovery requests should have been established.

Manual for Complex Litigation (1977) §3.10, page 120.

Courts have long recognized the power to manage their dockets. In *Landis v. North American Company*, 299 U.S. 248

(1936), this court acknowledged "the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." 295 U.S. at 254-255.

In *Greyhound Lines, Inc. v. Miller*, 402 F.2d 114 (8th Cir. 1968), the Court of Appeals for the Eighth Circuit stated:

CUTTING OFF DISCOVERY

> Defendant asserts the court erred in cutting off discovery rights; contends the court's action was contrary to the spirit and intent of our broad and liberal discovery rules and that such action was in excess of the court's powers. No cases are cited for this contention.
>
> Initially, we think the matter falls within the discretionary powers of the District Court and, absent abuse or prejudice, it will not be disturbed by us. Title 28 U.S.C. §2071 grants the Supreme Court and all other courts established by Congress the power to prescribe rules for the conduct of their business consistent with congressional enactments and the rules of practice and procedure prescribed by the Supreme Court.
>
> The court had inherent power to control the time table on discovery within reasonable limits. . . .

402 F.2d at 144.[5]

---

[5] See also *Riverside Memorial, etc. v. Sonnenblick-Goldman*, 80 F.R.D. 433, 435, (E.D. Pa. 1978) (a trial judge is charged with the duty of moving his cases expeditiously and to do so, he must have the power to order time limitations); *Transamerica Computer Company, Inc., v. IBM*, 573 F.2d 646, 652-653, (9th Cir. 1978) (under Fed.R.Civ.P. 26(c)(2) the district court presiding over discovery procedures can dictate "the specific terms and conditions upon which discovery may be had. This rule merely clarifies the formal rule . . . [and] . . . certainly empowers the court, inter alia, to set deadlines for completion of discovery").

Similarly, *In Re AIR CRASH DISASTER AT FLORIDA EVERGLADES ON DECEMBER 29, 1972*, 549 F.2d 1006 (5th Cir. 1977), the Fifth Circuit Court of Appeals stated:

> Managerial power is not merely desirable. It is a critical necessity. The demands upon the federal courts are at least heavy, at most crushing. Actions are ever more complex, the number of cases greater, and in the federal system we are legislatively given new areas of responsibility almost annually. Our trial and appellate judges are under growing pressure from the public, the bar, the Congress and from this court to work more expeditiously. In most instances these pressures reflect fully justified societal demands. But court resources and capacities are finite. We face the hard necessity that, within proper limits, judges must be permitted to bring management power to bear upon massive and complex litigation to prevent it from monopolizing the services of the court to the exclusion of other litigants. These considerations are at the heart of steps to create procedures for handling complex litigation.

549 F.2d at 1012.

C. The three-judge District Court did not usurp power when it closed and subsequently declined to reopen discovery

The District Court was well within its discretion when it issued its Order of October 16, 1978 establishing a discovery cut-off date of December 31, 1978. Plaintiffs' attempts to characterize the court's action as a *sua sponte* imposition are misleading. The transcript of the October 13, 1978 hearing, A.

1, demonstrates that the date for discovery completion was arrived at by virtual stipulation of plaintiffs' counsel. During a general report to the Court regarding the status of the case, plaintiffs' counsel affirmatively represented that discovery was nearly completed and that the remaining portion could be finished by December.

> [By plaintiffs' counsel, Mr. Vieira] Now as this summary prepared by Mr. Miller, recounts, we have been, since early in 1977, conducting depositions of various individuals who fulfilled the leadership roles in the NEA, MEA and MCCFA: their political action committees and so on. We have conducted 17 depositions, we have two that are scheduled for next week.
>
> The defendants have also produced, as this document recounts, quite a bit of materials that we are now analyzing and putting into form. We think we are getting just about to the end of what we consider is necessary to the presentation of the case . . .
>
> * * *
>
> [The Court] What is your time frame, how much time are we talking about from this point on?
>
> Mr. Vieira: . . . we ought to be able to get it done, if we really push it, by early December—mid-December. After that it is a matter of preparing a record and drawing up a motion. We have been doing that as we have been going along.
>
> The Court: From your standpoint we will complete all discovery by the 31st of December?
>
> Mr. Vieira: I think we can do that.

A. 3-4 & 8.

Plaintiffs' admission that they "did not then oppose the order"[6] establishing a discovery cut-off is, therefore, an understatement. Plaintiffs now urge, however, that they ought not be held to the statements made to the court by their counsel on October 13. Their explanation reveals a peculiar and troublesome attitude of arrogance.

Plaintiffs' counsel apparently see their lack of candor before the Court as justified by their desire to conceal an investigation into the supposed "cover-up conspiracy" of defendants and their counsel. It is submitted that no investigation undertaken by a private litigant licenses an attorney to be less than frank before a court of law. Nor should any attorney be permitted to brush aside representations such as those made by plaintiffs' counsel to the District Court on the basis of reasons such as those forwarded in Plaintiffs' brief.

One reason advanced by plaintiffs for representing to the Court that discovery was almost completed and that they would finish by December, when they apparently believed that discovery had been thwarted by a "conspiracy", is that the concerns were not sufficient to bring to the Court. Weeks before the hearing, plaintiffs' counsel had engaged a group of private investigators to surreptitiously interview officials and employees of the defendant labor organizations in pursuit of their hope of establishing a "cover-up conspiracy."[7] It is difficult to conceive that concerns sufficient to justify such an unusual undertaking were somehow "too fragmentary" to

---

[6] Petition, 18.

[7] The ethical propriety of actions by National Right to Work counsel representing plaintiffs in this regard was the subject of a motion to censure made by defendants. This motion was denied by the Court in its April 4, 1979, order.

bring before the District Court. A review of the Petition demonstrates that plaintiffs had a substantial amount of the "evidence" relied upon to establish the "cover-up conspiracy," including that which purportedly implicates defendants' counsel, well before October 13. One would assume that a party would approach the court to seek its assistance in dealing with the problems supposedly encountered by plaintiffs.

Another reason advanced by plaintiffs for their misrepresentations is that "prematurely to have revealed the private detective's activities would have alerted the UTP to what he had uncovered." This statement is based on the thoroughly inappropriate assumption that plaintiffs, through their private investigators, could more effectively deal with the alleged "conspiracy" than could a United States District Court.

Similarly, the professed hope of plaintiffs' counsel that subsequent witnesses would testify "properly" is inconsistent with their actions in dispatching private investigators to Minnesota. Further, such a "hope" cannot logically constitute a reason for plaintiffs' failure to indicate even the slightest of problems to the District Court.

An alternative explanation for the actions of plaintiffs' counsel on October 13 is that the statements made to the District Court were in fact sincere. As the agreed-upon deadline approached, however, plaintiffs' counsel simply got "cold feet" concerning trial of the case and decided to concoct some type of "conspiracy" to justify a prolonging of the discovery process. This explanation is supported by the flimsy, though admittedly not brief, nature of the "conspiracy" scenario forwarded by plaintiffs.

A trial court is entitled to take at face value the statements of counsel practicing before it. It is entitled to presume that

counsel means what he says when he agrees to the substance of a proposed court order. Plaintiffs may not complain about the terms of a discovery cut-off date which they agreed to.

The District Court was also well within its discretion in refusing to grant plaintiffs' motion to reopen discovery, and for reconsideration of its initial refusal. The plaintiffs have had a full and fair opportunity to conduct discovery in this case. During the two and a half year discovery period, plaintiffs have engaged in what can only be described as painstakingly thorough discovery. Plaintiffs have served two sets of interrogatories on defendant unions which in all sub-parts total 371 questions. Plaintiffs have also served at least five sets of formal requests for production of documents. The documents produced in response to plaintiffs' demands number approximately 75,000 to 80,000 document pages. In addition, plaintiffs have taken the depositions of no fewer than 29 staff members of defendant labor organizations and eight persons who are not parties to this action, (including members of President Carter's staff) which depositions consumed approximately 55 days. Further, plaintiffs served and defendants responded to 381 separate requests for admission.[8]

Plaintiffs rely upon an extensive set of allegations of misconduct in the discovery process by defendants and defendants' counsel. Notwithstanding their numerosity and length, these allegations are wholly without substance.

---

[8] Defendants detailed the extent of completed discovery in their brief before the District Court, A. 24-31.

Defendants responded to plaintiffs' allegations in the District Court by pointing out the fallacies which saturate plaintiffs' charges.[9] These fallacies include:

1. A refusal to accept that defendant labor organizations are or behave in any fashion other than as a well-oiled and highly centralized machines.

2. A charge that any witness who fails to recollect with absolute precision a matter deemed relevant to plaintiffs' case is either "evasive" or is "lying".

3. Demonstration of a "contradiction" by either changing the meaning of terms or the subject matter to which the statement is directed.

4. Refusal to believe that any action for which plans were made was not carried out precisely in accord with such plans.

By repeatedly utilizing such fallacies, plaintiffs have constructed their conspiracy. Stripped of such attempts at distorting the record, plaintiffs' "conspiracy" is little more than a fastidiously ornamented mirage.

An example of such fallacious reasoning is plaintiffs' mischaracterization of the testimony concerning the "1340 Club". Plaintiffs charge MCCFA members Sands and Johnson with lying by stating that the 1340 Club never had any significant existence, or had become "defunct".[10] When the unexcerpted

---

[9] Throughout their Petition, plaintiffs refer to "uncontroverted" evidence of this "conspiracy". *See, e.g.*, Petition, pp. 27, 30, 37, 47, 52, 53. Defendants reject unequivocally the notion that plaintiffs have presented any evidence of misconduct by defendants or defendants' counsel. Defendants simply refused to burden the District Court with a point-by-point analysis of a 266-page brief concerning a discovery motion. It was and is deemed sufficient to demonstrate the disingenuous nature of the "reasoning" utilized by plaintiffs through illustration. See defendants' brief to the District Court. A. 21.

[10] Petition, p. 17, 19.

testimony from depositions is read, there can be no doubt as to the candor of the witnesses. Sands and Johnson never denied the existence of the 1340 Club—in fact, Sands described the 1340 concept, A. 114. Both expressed the subjective opinion that the 1340 Club "structure was never completed sufficiently to become a reliable vehicle in any useful way." A. 114. And while both indicated they had lost touch with the 1340 Club, neither stated that they knew that the 1340 Club was no longer in existence. According to Johnson:

> As far as I know it's defunct or on somebody's back burner somewhere. . . .
>
> Well, my response yesterday was a response to your question about whether or not there might still be some individuals who at one time had identified themselves as members of the so-called 1340 Club, and could they be called upon at a moment's notice or short interval of time to perform some legislative or political function, and my response was that I wouldn't be a bit surprised if there were some areas in the state, a small number I suggested of 134 legislative districts where there still could be individuals that could be called on the telephone and we could ask to get involved in some manner.
>
> I indicated yesterday that I haven't heard anything from the 1340 Club. I used the word "defunct" to describe it. There doesn't seem to be any action going on associated with an attempt to organize it, reorganize it or keep it going. If such action is ongoing, I'm unaware of it.

A. 110, 112. According to Sands: "I'm not aware if the 1340 exists." A. 115. From this testimony, plaintiffs leap to the conclusion that Sands and Johnson testified that the 1340 Club "was no longer operative". Pet. A., 314. The lynchpin in this

assertion is a tactic repeatedly used by plaintiffs: the "he must have known" argument. Because Sands, according to one person, is "politically active", therefore "he must have known" about the 1340 Club up to the present day. Pet. A., 317. Such leaps in reasoning are typical of plaintiffs' arguments. It is submitted that the testimony of Sands and Johnson can be thought to be untrue only by a party determined to prove a "cover-up conspiracy" and unwilling to accept without embellishment what the testimony really says.

Plaintiffs claim that Joseph Letorney, who is an NEA Governmental Relations Consultant "testified evasively". The appendix references used to support this charge demonstrate several of the fallacies upon which their charges of wrongdoing lie. One such fallacy is demonstrated on pages 250-251 of petitioners' appendix. First, plaintiffs' counsel asked Mr. Letorney a very specific question: Had he supplied the names of teachers to help operate a phone bank? He answered no. Plaintiffs then take a very general statement by Mr. Letorney that he encouraged organizers of the campaign to obtain volunteers and organize a phone bank, and claim that it is inconsistent with the earlier statement. Upon this "inconsistency" they charge Mr. Letorney with "untruth." The absurd nature of plaintiffs' claim is obvious. Mr. Letorney's statement that he did not supply names of teachers for the operation of a phone bank is not in any way inconsistent with the fact that he encouraged the solicitation of volunteers and the establishment of a phone bank.

On pages 253-258 of petitioners' appendix plaintiffs demonstrate the illusory nature of the basis of their claim of evasive testimony. On those pages Mr. Letorney is asked if he arranged for the presence of two NEA staff persons, Mr. Lathrop

and Mr. Hammer, at a campaign headquarters. Mr. Letorney stated that he did not arrange for Mr. Lathrop's presence, and did not recall arranging for Mr. Hammer's presence. He testified further that he did not know who arranged for their presence. For some reason plaintiffs charge that this testimony is "evasive." The apparent basis for this charge is that plaintiffs' counsel does not believe the testimony. Pet. A. 258. However, counsel's unfounded belief that a witness is lying provides no factual support for a charge of wrongdoing.

The specious nature of petitioners' allegations is further demonstrated by analysis of their contentions of a "cover-up" regarding the NEA's procedure for the endorsement of a 1976 presidential candidate. For example, NEA employee Stanley McFarland, is accused of denying that such a procedure existed, Petition p. 19, when, in fact, he stated there was a time line for the endorsement by NEA members. Plaintiffs true complaint appears to be a linguistic dispute with McFarland's use of the term "time line" as demonstrated by the following colloquy:

> Q. [by Dr. Vieira, for plaintiffs] . . . I find it very difficult to believe that at no period of time did someone sit down and draw up the simplest outline of what you hoped or anticipated . . . you were going to do.
>
> A. [Mr. McFarland]. Certainly, there was a time line.
>
> Q. That's what I mean by plan. You had a time line.
>
> A. It is a time line.
>
> A. Sometimes to me a plan is a plan. We live in different worlds.[11]

Pet. A. 199 n.90.

---

[11] An example of a similar fallacy is found in the charge by Plaintiffs that MEA employee Gene Mammenga has testified untruthfully. The errors in Plaintiffs' reasoning were explored in the brief before the trial Court. A. 45.

Plaintiffs flatly allege that defendants' counsel are part of the supposed "cover-up conspiracy". The primary evidence advanced in support of this charge, both here and before the District Court, lies in the recollection of a statement allegedly made by MEA employee Kenneth Bresin while surreptitiously interviewed by one of the detectives hired by National Right to Work lawyers.[12] During his deposition, private investigator, Jeffrey B. Saunders recounted this conversation:

> Q. You said in the course of this conversation, he made some mention that his hands were tied with respect to organizing teachers.
>
> A. Right. I said, 'How do you go about organizing teachers?'
>
> He said he, personally, couldn't do anything, that his hands had been tied, that because of the lawsuit with the National Right to Work Foundation, NEA's attorneys had advised him not to get involved.
>
> Q. Now that's the phrase he used or term he used, 'NEA's attorneys'?
>
> A. Yes, he did.
>
> Q. Advised him not to get involved in what?
>
> A. On company time. He said as a consequence, he has had to work on behalf of Fraser on his own time, after 4:30 p.m.

Pet. A. 264-265.

Accepting this testimony as absolutely accurate, it is impossible to fathom how a "cover-up conspiracy" engineered by defendants' counsel can be adduced from the record. "NEA attorneys" gave legal advice to their clients. Defendants' counsel are unaware of any legal or logical basis for the proposition that such conduct amounts to a "conspiracy".

---

[12] Petition, pp. 18, 27 n. 18.

Plaintiffs also allege that defendants' counsel withheld documents in connection with discovery proceedings. Defendants presented the District Court with the Affidavit of Eric Miller, as well as with evidence from the record which refutes this contention. A. 48-103. Specific limitations concerning correspondence files were subject to negotiated agreement between the parties. A. 96-99. Plaintiffs' counsel never objected to the results of such negotiations. Employees of defendants familiar with the files participated in document production. A. 40. At no time prior to December 30, 1978 did plaintiffs' counsel express any objection to the quality of document production nor did they ever move the Court to compel the production of any documents.

In particular plaintiffs express concern about document production from the NEA Archives.[13] In complaining about the "unilaterally limited production", however, plaintiffs omit mention of a court-ordered limitation on production to those documents "concerning activities related to the campaigns of candidates for election to public office".[14] As to the comprehensiveness of those documents which were produced, the testimony of long-time NEA Archivist Alice Morton is in point:

> "Q. (by defendants' counsel Mr. Selzer) Did you show me all of the areas where you were aware that there would be materials relevant to this document request?
>
> "A. I did.
>
> "Q. And did I, before that, describe to you the type of request that we were concerned with?
>
> "A. Yes, and the date.
>
> "Q. And did you observe that Ms. Hanna and myself searched all the places that you designated?

[13] Petition, p. 23.
[14] Order of Magistrate Renner. A. 118.

"A. Yes, and—I made sure you did.

"Q. And can you think of any place that we did not look where you, based on your experience in the archives, would expect to find material relevant to this document request? Was there any place that we overlooked?

"A. No, other than the materials, information that would be found in the Reporter, and Today Education, and News, NEA News.

"Q. Publications?

"A. Those materials which you explained to me, that the plaintiff already had had, that you explained, and also the NEA handbooks."

Deposition of Alice Morton A. 113. Defendants' counsel have produced documents in a manner perfectly consistent with the good faith demanded by the Federal Rules of Civil Procedure. No "cover-up conspiracy" is to be found here.

Plaintiffs similarly allege that defendants have engaged in the destruction of documents. This claim is a gross exaggeration. Plaintiffs refer to, at most, two isolated incidents.[15] In one of these, the testimony of Robert Harmon (an employee of the National Education Association) taken in late 1978 indicated that some pre-1976 correspondence files had been destroyed. In the other, the testimony of Stanley McFarland, another NEA employee, indicated a belief that some documents might have been destroyed. Given their worst construction, this is hardly evidence of wholesale destruction pursuant to some "cover-up conspiracy". In both cases, any destruction taking place pre-dated specific requests for the documents

[15] Pet. A. 190-192.

sought. Given the breadth of discovery in this case and the size of the organizations involved, two isolated examples of failure to maintain documents can hardly be surprising, or considered evidence of bad faith.[16]

Plaintiffs' persistent accusation of bad-faith denial of Rule 36 Requests for Admission is groundless. The District Court was provided with examples of plaintiffs' Rule 36 requests, and explanations why agreement to many of them was impossible. A. 36-39. Defendants' philosophy was straightforward: admissions were confined to facts, and not extended to the legal theories and conclusions of plaintiffs' counsel. It is difficult to conceive how such a posture can be characterized as "stonewalling".

---

[16] It should also be noted that plaintiffs have never sought, nor the Court issued any order restricting disposal of documents by defendants.

CONCLUSION

The record in this case establishes that neither defendants nor defendants' counsel have engaged in any type of misconduct in connection with discovery. The three-judge District Court was fully justified, after consideration of the briefs before it, in denying plaintiffs' motions and upholding the termination of discovery. Certainly, there has been no abuse of discretion as would justify the issuance of a writ of mandamus. Accordingly defendant labor organizations respectfully request the Court to deny petitioners' motion in all respects.

Respectfully submitted,

ERIC R. MILLER
KEITH E. GOODWIN
DONALD W. SELZER, JR.
MARK D. ANDERSON
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
1700 First National
Bank Building
Saint Paul, MN 55101
Attorneys for Defendant
Labor Organizations

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-74 Civ 659

LEON W. KNIGHT, et al., Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY, et al., Defendants.

Motion in the above entitled matter came on before the Honorable Donald D. Alsop, one of the Judges of the above Court, at St. Paul, Minnesota, on October 13, 1978, commencing at 9:30 a.m.

Appearances:

WILLIAM E. MULLINS, Esq.
and EDWIN VIEIRA, Jr., Esq.
Appearing on behalf of
Plaintiffs
DONALD J. MUETING, Esq.,
ERIC MILLER, Esq., and
STEPHEN BEFORT, Esq.,
Appearing on behalf of
Defendants

[2] Whereupon, the following proceedings were had:

The Court: It seems to me I might just as well go with that Knight matter first because I don't think that will take us 15 minutes, and rather than have all those other lawyers wait, I think we can take care of that.

So, if you want to wait just a moment—what is your pleasure? Do you want to wait a few minutes?

Mr. Mingo: We can come back.

The Court: Whatever is more convenient to you. Do you want us to take a break? I leave it up to you.

Mr. Mingo: We will take a break.

The Court: We will let you know.

Two things come to my mind: First when I see Mr. Mullin I should tell you that last weekend I, among other things, read a book entitled the Sixth Word by Mr. Lebedoff (ph) as I am sure you have read. I have had Mr. Opperman in my court any number of times and somebody told me because of that I should read the Sixth Word and on the first page it was all about William Mullin.

Mr. Mullin: I want the Court to know that in the ten years that have elapsed since that book was written I have changed my ways. Anything you have read in that book would not now be applicable.

The Court: I'll let that pass. But, it was interesting, I had read the 21st Ballot previously. I like his [3] style of writing.

Secondly, about a month ago, or three weeks ago I had my able assistant Ms. Palmer prepare a list of cases '74 and earlier. I came on the bench in January of '75, so anything '74 and earlier are cases that I came to by way of inheritance. The rest of them I have to assume full responsibility for and I am delighted to report that yours was on that list and the list is down to about eight or ten now, maybe six. You people will soon have the distinction of having the oldest case on my calendar or thereabouts; which may or may not be considered a distinction, and I thought I haven't looked at your case for so long I kind of lost track of it, or what is going on to be sure, and I thought it might be helpful—I know it would be helpful

to me at least if we could just get together for a few minutes and have you tell me where we are at and where we are going, and how we are going to get there.

As we all know it is now a three judge case and there is nothing I can do with it except to see how it is doing and report to my brethren as to what we might expect in the future. I see you have 50,000 pages of documents produced, among other things, and knowing my other two brethren on the three judge panel, they are going to be overwhelmed when they see that number.

For the plaintiff who wants to tell me where we are at and where we are going or how we will get there and what we [4] should do to do something with the case.

You are from Washington, as I remember?

Mr. Vieira: Maryland, sir.

The Court: All right.

Mr. Vieira: The first thing I want to assure Your Honor of is we have no intention of asking Your Honor, or the other judges to read any 50,000 pages of documents. I have had the unfortunate pleasure of looking at most of those pages. Our intention is to, as much as possible, to distill that material, synthesize it, and get it in tabular and summary form and present it in that fashion; in what we hope will be a convenience for both the Court and clerks to deal with.

Now, as this summary prepared by Mr. Miller recounts, we have been, since early in 1977, conducting depositions of various individuals who fulfilled leadership rolls in the NEA, MEA, MCCFA; their political action committees, and so on. We have conducted 17 depositions, we have two that are scheduled for next week.

The defendants have also produced, as this document recounts, quite a bit of material that we are not analysing and

putting into form. We think we are getting just about to the end of what we consider is necessary to the presentation of the case and we hope that as soon as that is finished we are going to be able to prepare more or less straight forward summary judgment motions, no hearing, calling of witnesses, and [5] so forth being required; that all of the constitutional issues at least can be decided on the basis of documents that have been produced and introduced as exhibits in depositions, and on the basis of depositions and affidavits. So there won't be any necessity for any prolonged proceedings.

It is no secret to anyone connected with the case that the plaintiffs' position here is that the NEA and various other organizations constitute something very much akin to a political action organization or political party. That is what we are trying to prove. There is no dispute about that. There has never been any dispute as to our contention. We think now that we have reached the crux of the case because the two witnesses that are to be called next week, Roslyn Baker (ph) and Stanley McFarland (ph), are two of the leading figures in the NEA's Governmental Relations Department; and we believe that they have had, during 1976 and perhaps earlier, significant and substantial contacts with particular politicians, candidates for elective office, and in particular Mr. Carter and Mondale, they were very much involved, along with others, with the NEA and affiliate organizations in that 1976 Presidential Campaign.

Besides those two individuals we have subpoenaed five others, four of whom are on Mr. Carter's staff in the White House —Hamilton Jordan being one figure I am sure you are familiar with by name, and at the present time we are having discussions with their counsel in Washington for the production [6] of affidavits or documents from them so we won't have to bother with any depositions.

Our plan is a very simple one, I hope it is a straight forward one, as soon as we are finished with Baker and McFarland next week we have at present a list of four or six people, at the most six, that we would want to call to finish up the depositions.

As Mr. Miller has suggested here on this summary, there are some documents, six requests for the production of documents that the NEA and MEA have yet to produce. We think we will have another couple of pages fo document requests, especially after we have heard from McFarland and Baker.

After that, as far as we are concerned, we think we will have adduced all the evidence that we believe is necessary to prove the contentions that we have made.

The Court: You are intending to make a motion for summary judgment to be attached with an outline or a synthesis, as you call it, of the documentary evidence whether it be by way of deposition or documents that have been produced up to this point?

Mr. Vieira: What we hope to do is take the relevant portion of all of the documents, all the documents have been introduced at one state or another, or they will be by the time summary judgment comes up, we will take the relevant pages out of those documents and prepare a large appendix to our [7] summary judgment brief, cross-referenced completely to the brief and to the depositions, and so forth and so on, and that would be what would be presented directly to the Court.

The Court: At one time there was the hope that we could prepare—you could prepare a stipulation of undisputed facts. Now I know you put some energy on that but I have the feeling that maybe it was not productive. What is your—

Mr. Vieira: Well, it was and it wasn't, Your Honor. We presented the defendants with 300 or so requests to admit cer-

tain facts and they admitted some and they denied others and we had conferences with them over the various types of language that we wanted or they wanted. Sometimes we compromised and sometimes they did; and sometimes neither of us did. The short answer was the final request we made, which was that the defendant organizations, the NEA, MEA, MCCFA, and so forth, are substantially engaged in certain types of political activity was denied and that is the ultimate conclusion of fact that we are trying to prove.

The Court: Were there any fact, or was there any stipulation of undisputed facts of any kind that either has been or will be produced so that we have some framework within which to operate?

Mr. Vieira: Yes, sir. I am not sure of the number, maybe Mr. Miller can suggest it, but there is a goodly number of the requests to admit that were admitted and I don't [8] think we are going to have any problem with respect to Mr. Mueting's defendants, that is the State officials, as to how the MCCFA was certified, how the collective bargaining agreement was negotiated, what the MCCFA has been doing with respect to the Community College Board—

The Court: I am talking about a document that will be described as a stipulation of undisputed facts rather than having to go back through the requests for production, or the requests for admissions, and make—go back and dig into this file. Is there going to be a document which will have a stipulation of undisputed facts, at least to the extent that there are certain facts about which there is no dispute? I thought that you had put your efforts and energy towards trying to produce that; and I also thought it wasn't successful, but it seems to me there must be come things which would give us as judges a framework to start with and say, "these are the undisputed facts".

To be sure there will be other disputed facts, but has there been any effort to generate such a document?

Mr. Vieira: No. Aside from the work we did on the request to admit, we haven't sat down—

Mr. Mullin: I should add Mr. Mueting and I have been working on a document between the plaintiffs and the defendant State officials that would summarize the mechancis of the operation of the statute that is under challenge; and there are really no disagreements we know of about language. We have been [9] discussing this document because of the pendant—the fact that other discovery has been pending we haven't finalized it, but with respect to those matters and with respect to—perhaps with respect to other mechanical matters we can work out with the defendants, such documents are possible here, Your Honor.

The Court: It seems to me there must be some areas about which there is no substantial dispute on the facts. To be sure there may be others about which there is substantial dispute, but it seems to me that the attorneys—I will hear from all of you—that the attorneys ought to be able to prepare a statement of uncontroverted facts—not agreeing they are all relevant or they all have bearing on the issues, but at least to give us a starting point from which to work. I think that that would be helpful to myself, at least, and helpful to the other judges too.

What is your timeframe, how much time are we talking about from this point on?

Mr. Vieira: The thing that has actually taken the time in these depositions from '77 to today has not been the time that has been used in the depositions. Like I say, we have 17 people so far. Most of the depositions have been one day to two days, some half a day, so it is about 35 days total. What has been

the actual time lag has really been a scheduling matter. We have bent over backwards not to try to call in Mr. Miller's people when they have had some other commitments and [10] so on and so forth.

I think with respect to the ones we are talking about after Baker and McFarland we ought to be able to get it done, if we really push it, by early December—mid-December. After that it is a matter of our preparing a record and drawing up our motion. We have been doing that as we have been going along.

The Court: From your standpoint we will complete discovery by the 31st of December?

Mr. Vieira: I think we can do that.

The Court: And, how much time would you need to prepare the motions and your supporting material and background data?

Mr. Vieira: I think if we had at the outside 45 to 60 days we can put the whole thing together. We have been working at it as we go along but as Mr. Miller suggested there is a lot of material here, you are talking about an organization that has 1.8 million members.

The Court: All right. Now who should I hear from first, the State or the organizational defendants? Do you represent all of the employee organizations?

Mr. Miller: We do, Your Honor.

To try to avoid a depressing note, when Edwin recites that there are a million eight NEA members they certainly are not all involved, although there has been times I have wondered [11] in light of the scope of discovery.

The summary I have prepared, Judge, I won't go over. You have had a chance to previously review it, there has been a substantial amount of discovery in this case.

The Court: This summarizes the discovery that has taken place to date?

Mr. Miller: It does.

The Court: All right.

Mr. Miller: The brunt of it has taken place in a little over two years now, We have been doing nothing but discovery. As the summary indicates we have answered over 350 interrogatories. We have produced over—

The Court: Excuse me for interrupting, you will be happy and thrilled to know at our Judges meeting yesterday we adopted the Minnesota practice, as in Chicago, or the Northern District of Illinois, of limiting written interrogatories to fifty. That works in State court pretty well, doesn't it?

Mr. Miller: It does, Your Honor, on a certain number of cases.

Mr. Mullin: It's too late.

Mr. Miller: I could add it is too little, too late. We have answered more than 350 to date. Our estimate of 50,000 pages is a conservative one. There are some more documents which we have consented to produce and we are going to produce very shortly, so the number is going to be edged upward.

[12] We have had a substantial number of depositions, and by just the titles of the people, Judge, you can see that all of the principles and some folks who would probably rank in the next echelon in terms of officers and professional staff of all of our clients have been deposed; along with at least one of the State defendant officers.

We have responded to 381 requests for admission. Let me stop on that point: those admissions or requests, Judge, consisted of this book right here and then another stack about another ten to twelve inches in height of documents. We have admitted to the authenticity of every document that has been submitted to us that has been produced in the course of discovery. I won't show you the responses we put in, but in answer to

your inquiry we have admitted to a substantial number of fundamental facts in this case.

We had suggested a long time ago, as I recall a year ago this last summer, that we try our hand jointly at a stipulation of facts. We have had some encouragement from Your Honor on that point. Now we started out in that vein but it ended up with the plaintiff submitting requests for admissions. We had difficulty with some of those requests and we have either denied them or some of them we have admitted in a limited fashion.

If we were to take our responses to those requests for admissions we would come up with a fairly fundamental framework in terms of admitted facts. I do not know how much beyond [13] that the plaintiffs intend to persist on their characterization of the facts. I am at a loss, therefore, to frankly report to you where I think we are going to end up in being able to completely stipulate and agree to the facts.

I will be candid with you in light of what I preceive to be some of the purposes or goals of the lawsuit. I don't think we are going to be able to completely agree. I think we are going to be in conflict on certain facts and we may very well have to return to the Court and I think we are going to have to, to seek some direction from you as to how we are going to handle that, whether it is going to be handled in affidavit form or whether we are going to have to have perhaps some limited live testimony.

In terms of what I preceive to be the first things first, Edwin has given us a schedule as to when he thinks he can complete his discovery and that is by year end. In my view the discovery should terminate upon the completion of those two depositions that he has referenced next week which are to be taken in Washington, D.C., all next week; and upon our producing the documents that remain.

I don't want to take the Court's time any more than to tell you the remaining documents to be produced consist of correspondence out of the Central Administrative Offices of the NEA; consisting of a fair amount of material. All of that material has already been produced on behalf of the other employee organizations. [14] I find it very difficult to understand the necessity for up to six or more depositions, assuming that they are of my clients, I find it very difficult to understand what additional documents are going to be requested, as recited by Mr. Vieira, after the two depositions are taken next week.

I will be very candid with you, we have been very open in terms of responding to this discovery. We have not come to Your Honor in terms of seeking protective orders and the like; we have gone, I believe, more than—to use a very poor pun —our fair share in responding to this discovery. I think it should terminate and, very frankly, if we are going to receive some additional discovery requests I will place everyone on notice that we may have to return to the Court in order to limit that discovery. We have had a lot of discovery, it has been expensive, and the 50,000 pages that I mentioned, as I say, one, is conservative; those pages have been plucked out of many more times than 50,000 pages to arrive at those. My office has spent a lot of time in Washington, D.C., looking through records there as well as here in Minnesota. We are not interested in going any further.

I would, I guess, urge the Court to consider cutting off discovery or, at a minimum, placing a date for that discovery which the plaintiffs want to propose to be submitted so that we can immediately assess it and if we have to, return to Court.

[15] We want to get the case underway in terms of first completing discovery and get it on for a motion. It has been pending four years this December.

The Court: All right. Who is going to tell me about the State's position?

Mr. Mueting: Your Honor, Don Mueting from the Attorney General's Office. As Mr. Mullin indicated we have been working on a proposed stipulation of facts. I really can foresee no difficulty in arriving at a stipulation of facts to indicate to the Court the workings of the Public Employment Labor Relations Act, with regard to the relationship between the State defendants and the Minnesota Community College Faculty Association.

We have been waiting in the bullpen, so to speak, during this entire period. We haven't been intimately involved in the discovery, we have been monitoring it. I really can foresee no problems in arriving at a stipulation. We have discussed it in some detail and there really aren't any factual disputes with regard to the application of the Act in this particular instance.

We also will, I might add, talking about a second stipulation, in which a number of parties will be added to the lawsuit. Since it was filed in 1974 we have had some changes on the Board, Community State Board for Community Colleges, and we have had changes with regard to presidencies of colleges involved. [16] So, that will also be taken care of by way of stipulation.

Other than that, Your Honor, we are prepared to go to trial whenever the other parties are.

The Court: When you say trial, what do you envision a trial—what form do you envision it to take from your point of view?

Mr. Mueting: From our point of view I think we can handle it by way to stipulation on all facts. I don't think there is anything in dispute and summary judgment would be entirely appropriate as far as we are concerned.

The Court: As far as the State defendants are concerned, your discovery is completed?

Mr. Mueting: I believe we have supplied the plaintiffs with everything they have asked for.

The Court: I am talking about your discovery.

Mr. Mueting: Ours is completed.

The Court: So the State discovery is completed in the sense that you don't have any more to do?

Mr. Mueting: That is right.

The Court: Now do you anticipate making a motion for summary judgment on behalf of the State defendants so that the matter would be submitted to us on motion for summary judgment by all parties or will you just—how will you handle it?

Mr. Mueting: We haven't really decided how we are going to handle it. We were waiting actually to find out [17] what is going to happen between the plaintiffs and the employee defendants; to see how they are going to resolve their differences.

We will be prepared, if that seems appropriate, to submit this on motion for summary judgment, but we haven't made that decision at this time yet, Your Honor.

The Court: How about the discovery—I think that is all for your part, Mr. Mueting—How about the discovery for the organizational defendants that they want to initiate? Does that complete it?

Mr. Miller: Yes. We have taken one deposition as reported in that summary. We do have some outstanding interrogato-

ries to the plaintiffs which have not been answered; and depending on the road before us on stipulating, we may have some difficulties in that we served interrogatories—those which have been answered we were essentially told in response to contention interrogatories, we just went down their complaint and asked them for the facts underlying various allegations such as misrepresentation by some of my clients concerning what the Fair Share fee included. The response that we were uniformly given was we are still in the course of discovery and we will tell you in our trial brief. Well, that is not completely satisfactory from our point of view. If we can work out the stipulation of facts so that we understand which facts the plaintiffs in fact are relying upon in their complaint, we won't [18] have much trouble. But I do want to alert the Court that there are some—what I preceive to be potential, outstanding, problems in terms of arriving at an agreement on these facts.

A brief review of the requests for admissions I think will probably give Your Honor the best idea of the differences between the plaintiffs and my clients.

The Court: I am not suggesting that I am in a posture, nor do I feel the case indicates that I can expect that you would stipulate to all facts. Obviously there are going to be some differences of opinion as to what these depositions show. But, at the same time, there has to be a large area of facts about which there is no dispute and rather than for us three judges to sit down and browse through 18 depositions, or whatever number there are, it seems to me that the orderly fashion to do it is to have the attorneys prepare a stipulation of facts to the extent that they can. There are undisputed facts.

Mr. Miller: There is no dispute on that Judge. We have tried to do that, and we have done it in part through those requests for admissions.

The Court: All right. Now are you going to be making a motion for summary judgment or are you going to rely on letting the—suppose that the plaintiff were to make a motion for summary judgment and we were to deny that motion. We still have a lawsuit pending. Where are we at then?

Mr. Miller: Your Honor, I anticipate that assuming [19] we reach an understanding first on the facts that we can agree on, and we have an idea of what we cannot agree on, that all of us, all three corners of the lawsuit, I would anticipate would be before the Court on cross-summary judgment.

The Court: So you anticipate making such a motion too?

Mr. Miller: Yes, sir.

The Court: Even though you say there is a possibility that you would have to—you would want to present some live testimony?

Mr. Miller: That may be a possibility and if we cannot work out a mechanism for resolving that conflict, then we may have to go to that; or by affidavit.

The Court: Have I heard everybody now? Have you got any more you want to add in light of what these people have suggested?

Mr. Mullin: I think it might be helpful if I comment a little bit on the attempts to develop a stipulation of facts that have taken place so far.

We had discussions with the attorneys for the defendant labor organizations and it was agreed on both sides that the plaintiff should initiate the procedure and that—and get the ball rolling by presenting them with something in writing. And, as you have already been told we decided to do that in the form of request for admissions without the formality and the [20] requirement of response would be helpful in moving things along. So, we did prepare and serve on defendants 300

plus requests for admissions. Each one of those requests contained with it an interrogatory. The interrogatory requested that the defendant, if they denied the request, that they state what it was about the request that required the denial.

The responses that we received, as you have already been advised did move things along substantially in that there were substantial admissions as to the authenticity of documents. We are not going to have any problems that I know of with respect to the fact that a document is what it purports to be.

With respect to any attempt on our part in the request for admissions to describe, characterize, summarize, or generalize with respect to what the defendant labor organizations do, and what they are, we had a flat denial and the interrogatories were not answered because they were objected to uniformly.

So, as Mr. Vieira said we had extensive meetings in which we satisfied ourselves that the problems with these denials had to do with generalizations, descriptions, characterizations, and attempts to summarize what the defendant labor organizations do and what they are; which is at the heart of our case.

So, at the conclusion of these discussions we said [21] we feel we have—both sides agree we have gone as far as we could with our attempts to present this. So, we then said, "well, you try it". If you think our characterizations are loaded or unfair, or so on, you try a neutral characterization. We were then told that—by the defendant labor organizations—that that is not our job, it is your job and we are not going to do it. So, we got no feedback from them as to how they felt what they do and are could be summarized and characterized. We then said if you are not going to do that, that means that we are going to have to establish what these payments do and are. I think I used the words that that is going to require the writing the history of World War II; and we were told so be it, that is too bad, if that is the way it is going to be, fine.

That is the context of it, of the problem that the plaintiffs have been working on in getting the discovery that they have taken, taking the depositions and the like.

The only thing I can say is that in working on that problem from our side, we have fought long and hard about how to summarize—perhaps not in an agreed summary, but in a summary that we can present to the Court, all the documentation that we have gathered so that the limit that the Judges will be required to read will be as little as possible. We recognize that that is a very—next to winning the case, that is the most important thing that we have on our minds right now. We are going to do everything we can to accomplish that. We do not [22] anticipate presenting any live testimony. I want to make that clear right now. I don't know what other parties have in mind when they say they might require —might do that. We are not going to do that.

The Court: I can tell all of you that there is an extreme reluctance on the part of all of us, I guess to start taking live testimony in a three judge court case.

Mr. Mullin: We understand that.

The Court: You all understand that?

Mr. Mullin: And we are, from the beginning, we have been aware of that reluctance and we have never planned to do that.

So, what you are going to get from us is going to be fairly large in terms of the number of documents that back up our summaries and characterizations, and so on; but we do not anticipate that every piece of paper that we present to the Court to summarize our characterizations and generalizations will have to be read.

I would imagine that only with respect to the ones that the defendant labor organizations really hone in on and say that is really not true, or we really didn't have the kind of involve-

ment that you are saying we had and for example in the 1976 Presidential election it may be necessary for some reading of documents to satisfy the Judges as to who is right.

Anyway, I just want you to know we are aware of [23] the Court's concerns and we are working as hard as we can to meet them.

The Court: Well, I am going to do this: There is no way I can judge the appropriateness or inappropriateness of the four or five additional depositions to which you make reference to, Mr. Vieira, but number one, I will report to the other judges the summary that you have given to me; and just in a brief way your observations today.

I will issue an order which does two things, it closes discovery in the case on the 31st of December—so if you want to take any additional depositions or whatever else you want to do by way of your discovery, it will all be completed by December 31st. Now that may also involve your producing documents or answering outstanding interrogatories of the defendants, and if you are not satisfied with the answers that you get in that connection, then the only thing I can suggest is that you will have to bring on a motion to compel additional answers. You have done a lot of work together, I know, and I encourage you to keep doing that.

Mr. Mullin: You Honor, with respect to that, Eric is correct in saying that we have declined to respond to some of these interrogatories that have asked the plaintiffs what it is we do and/or are that you object to; what it is about us that makes you complain about having us as your exclusive representative and being required to pay money to us.

[24] It is true and I should advise the Court that we probably will not be able to amend those interrogatories until we have completed discovery, so—

The Court: Well, you have got now two and a half months within which to do it.

Mr. Mullin: I understand. What I am saying is it probably will require some time and it should be a short time after December 31; discovery having been completed by December 31, for us to come back in and say—these are really contention interrogatories, they are not disclosing any facts that we have and are holding back, it is just a question of characterizing them, the evidence that has been developed in the case.

With respect to that I would ask the Court that there be—that we be permitted say another 45 days in which to answer those interrogatories, or 30 days.

The Court: I am going to suggest to you that I want a stipulation of undisputed facts prepared and in to me by the 30th of January. Now if there are contention interrogatories that you need some additional time for, it seems to me you should be able to have those answered in the context of this time frame by mid-January. So, if you want some additional time to answer those so-called contention interrogatories, if I give you to the 15th of January that ought to take care of it.

All right, December 31st discovery will be closed except as to so-called contention interrogatories. I encourage [25] you to do it before that, but if you can't, you will have until January 15 for those.

Simultaneously with that I want you to continue your efforts on this stipulation of undisputed facts. It seems to me that by the 30th of January, or do you want another week on that, it doesn't—well it does make some difference to me—does that give you enough time, that four week period in January?

Mr. Miller: We will sure try.

Mr. Mullin: We will take a crack at it.

The Court: Let's say January 30, 1979, and then what I will do is schedule another get together like this, even now, for the last week in January so we can get together and see how you are doing and if we are on track, and encourage you to be on track because I know how much work you have put on this thing—I can tell by the file that you have been busy—so we will schedule another pre-trial for late January or early February and then, at that time, we can decide how you are going to present the thing by way of your motions or cross-motions for summary judgment, or however.

It seems to me the way to do it is to have three motions for summary judgment, all right?

There are two things that are just impressions that I have about this: Number one is a case out of Detroit and number two is the fact that the Statute has been changed or modified. Now are you addressing the case to the Statute as it [26] now exists, I assume?

Mr. Vieira: Yes.

The Court: Even in its modified form?

Mr. Vieira: Yes.

The Court: All right. So it is a current Statute that we are going to be concerned with?

Mr. Vieira: Yes.

Mr. Miller: That is my understanding, Your Honor. An earlier challenge to the Robinsdale case, which I think the Court is aware of, was addressed to the Fair Share Statute as it existed prior to its amendment in April of 1976—

The Court: Is that the case Judge MacLaughlin wrote?

Mr. Miller: That is the case Judge MacLaughlin wrote and it went to the U.S. Supreme Court and the U.S. Supreme Court denied to hear it on the basis it was moot because the

statute had been amended since the State Supreme Court had decided the Robinsdale decision.

The Court: All right. Is that all? Thank you for today.

(Whereupon the proceedings came to a close)

---

[27] REPORTERS CERTIFICATE

I, Lawrence P. Lindberg, do hereby certify that the foregoing is a true and accurate transcription of the stenographic notes taken by me in the above-entitled matter.

LAWRENCE P. LINDBERG
Official Court Reporter

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
Civ. No. 4-74-659

LEON W. KNIGHT, et al., Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al., Defendants.

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO REOPEN DISCOVERY

INTRODUCTION

On December 30, 1978, one day prior to the discovery deadline established by the Court at the October 13, 1978 pretrial hearing, plaintiffs served the present motion to reopen discov-

ery. The motion comes 49 months after the institution of this lawsuit, and on the heels of massive discovery and assurances by plaintiffs at the October 13, 1978 pretrial hearing, that they had "just about [reached] the end of what [they] considered necessary to the presentation of the case . . ." October 13 Pretrial Transcript p. 4.

In spite of the tremendous scope of completed discovery and the October 13 representations to the Court, plaintiffs now seek to reopen all discovery for the articulated reason that defendants have somehow acted in bad faith throughout the two and one-half year course of discovery. The timing of the motion is supposedly supported by plaintiffs' desire to obtain a "complete dossier" of defendants conduct, which effort allegedly warrants their decision to postpone "any revelations to this Court" at the October 13, 1978 pretrial. Plaintiffs' Memorandum p. 82 (hereinafter called Pl. Mem).

On January 19, 1979, plaintiffs served their supporting Memorandum along with attached exhibits and affidavits. The eleven volumes of material plaintiffs have submitted to the Court consists of a 266 page brief, 9 volumes of exhibits, numbering 37?, and one volume of affidavits, numbering 15. In spite of its length, the submitted material represents only a minute portion of the documents produced and the deposition transcript pages generated. The very length of this documentation belies the underpinnings of plaintiffs' motion.

As the remaining portion of this Memorandum will elaborate, defendants emphatically and categorically reject the insinuations and innuendoes contained throughout plaintiffs' 296 page Memorandum. The statements in the Memorandum are indicative of an incipient paranoia unfamiliar to defendants' counsel in its standard practice, (witness the suggestion that a "sprung staple" on a particular document somehow

supports the supposition that defendants and defendants' counsel had been repeatedly engaged in inappropriate and even, as hinted in various portions of the brief, illegal activities). Pl. Mem. 175.

Defendants' Memorandum and the attached affidavit of Eric R. Miller will address the history of discovery in this case, the efforts of the counsel to reach an accommodation regarding particular discovery demands and the total inappropriateness of plaintiffs' request to reopen discovery.

I. In Spite of Plaintiffs Belated Protestations, They Admit They Have Been Afforded the Opportunity to Conduct, and Have Conducted, Complete and Thorough Discovery.

The history of discovery will be set forth in Section II below. However, it is informative to the issues at hand to review some of plaintiffs own admissions as to the discovery they have been afforded. The admissions come from the October 13, 1978 pretrial and their January 19 Memorandum and are repeated in *seriatim*.

1. "This [296 page] Memorandum [and 10 volumes of supporting material] also represents a substantial condensation and systemization of the factual material now available in the record . . ." Pl. Mem. 44.

2. "[P]laintiffs have amassed considerable evidence to support their allegations." Pl. Mem. 45.

3. "Since the fall of 1976, plaintiffs have amassed facts showing [what they intend to prove]" Pl. Mem 80.

4. "[P]laintiffs have raised and documented the very-First-Amendment issue [which they assert is at the heart of their claim]" Pl. Mem. 76.

5. [After completion of the discovery set forth in pages 4 and 5 of the transcript of the October 13, 1978 pretrial hearing,] we think we will have addressed all the evidence we be-

lieve is necessary to prove the contentions that we have made." October 13 Pretrial Transcript p. 6.

6. "[W]e ought to be able to [complete discovery], if we really push it, by early December-mid-December." October 13 Pretrial Transcript p. 10.

The above statements totally refute any after-the-fact representation that plaintiffs have not been afforded a full and complete opportunity to discover all relevant facts.

II. Defendants Have Complied in All Respects With Each and Every Discovery Request as Modified.

Reconstruction of the history of discovery in this case is time consuming, tedious and complicated. Nevertheless, the allegations set forth in Plaintiffs' Memorandum deserve more than cursory treatment if for no other reason than to reject the unsubstantiated assertions to the effect that plaintiffs' discovery has been anything less than they requested.

The present lawsuit was instituted on December 19, 1974. Following an initial stay of discovery because of the pendency of and subsequent rulings on certain motions, plaintiffs have engaged in what can only be described as painstakingly thorough discovery. Indeed, the thoroughness of the discovery is demonstrated by their instant papers before the Court.

Plaintiffs have served two sets of interrogatories on defendant unions which in all sub-parts total 371 questions. Plaintiffs have also served at least five sets of formal requests for production of documents. The documents produced in response to plaintiffs' demands number approximately 75,000 to 80,000 document pages. In addition, plaintiffs have taken the depositions of no fewer than 29 staff members of defendant unions and 8 persons who are not a party to this action, which depositions consumer somewhere in the nature of 55 days.

In an attempt to understand and fully comply with the lengthy sets of interrogatories and document demands and the 381 separate request for admission, defendants met on numerous occasions with plaintiffs under the authority of Rule 5, Local Rules of Civil Procedure. As a consequence of those meetings and the understandings reached in those meetings, documents were produced along agreed upon guidelines as is set forth in more detail in the affidavit of Eric R. Miller. The depositions taken and categories of documents produced are as follows:

DESCRIPTIVE SUMMARY OF DOCUMENTS
PRODUCED TO PLAINTIFFS BY
NEA, MEA, MCCFA, IMPACE

NEA

Constitution and By-Laws
Budgets and Financial Statements
NEA Handbooks
Charts of Accounts
Policy Statements re: "Persons Paying Agency Shop Fees to NEA Affiliates" and "Political Activity Rebate Procedure"
"Speaking for Teachers" training materials
Board of Directors' Meeting Minutes
Executive Committee Meeting Minutes
Representative Assembly Proceeding Transcripts
Executive Office Central Correspondence files
Date Books of the President and Executive Director
Correspondence Files of the Goal Area Directors
—John Sullivan—Instruction and Professional Development
—John Cox—Teacher Rights
—Gary Watts—Affiliate Services

—Stanley McFarland—Governmental Relations

Correspondence files of administrative section directors

—Michael Dunn—Administrative Services

—Susan Lowell—Communications

Job descriptions

Business and Accounting documentation reflecting and supporting the NEA Program Budget

Guidelines for NEA-PAC

Government Relations—Monthly legislative reports

Evaluation of the UniServ program

Reports on Leadership Conferences for Education Association state presidents

Committee report re: dues increase

Report on the status of Strikes and injunctions

Documents re: endorsement of the Carter-Mondale candidacy

CAPE documents

Identification of legal case supported by NEA in Minnesota

Identification of cases in which NEA participated as amicus curiae

Correspondence files of Governmental Relations Staff

—Robert Harman—associate director

—Rosalyn Baker—liaison to Federal agencies

—J. Latorney—Government Relations Consultant

—R. D. VanderWoude—Government Relations Consultant

NEA publications

—*Today's Education*

—*NEA Reporter*

—*NEA NOW*

—*NEA Advocate*

Press Releases
Communications and Public Relations Training Materials
Documents from the NEA Archives relating to "political activity"

MEA

Articles of Incorporation and By-Laws
Budgets and Financial Statements
Organizatinonal Charts
Lists of Bookkeeping Accounts
Board of Directors' Meeting Minutes
Delegate Assembly Meeting Minutes
Resolutions re: Fair Share
Lobbyist Registration Forms and Disbursement Reports
Agreements between NEA, MEA and MCCFA
Publications: *MEA Advocate, Window on Legislation, VIP-Briefing Memo, Window on the Legislature*
"Political Action Workshop" materials
Expense Reports (of individuals noticed for deposition)
Job descriptions
Officers and Staff Manual
Negotiations Handbook
Correspondence files of MEA President
Correspondence files of MEA Executive Director
Rules, Regulations and guidelines for UniServ
Income and Expense Reports
UniServ staff training materials
Reports of meetings with legislators
Report of Future Directions Task Force
Precinct Caucus Training Materials
News columns of MEA President, Donald Hill
Correspondence files of MEA staff:
—K. Pratt—assistant director, communications

—K. Bresin—assistant director, governmental relations
Correspondence files of Governmental Relations Council Chairperson, M. Sokup
Resource files of the *MEA Advocate*
Press Releases

MCCFA

Constitution and By-Laws
Budgets and Financial Statements
Professional Staff Contracts
Board of Directors' Meeting Minutes
Delegate Assembly Meeting Minutes
Resolutions re: Fair Share
Lobbyist Registration Forms and Disbursement Reports
Tri-party Agreement between NEA, MEA and MCCFA
Publications: *Green Sheets* and *News Flashes*
Workshop materials
Legislative Reports of the Executive Director
Community College Contract Ratification Procedure
Certification of MCCFA as Exclusive Representative
Fair Share Payroll Deduction Request Information
Objections from Plaintiffs to the MCCFA re: Fair Share
Expense Reports of Ralph S. Chesebrough
MCCFA files index
Correspondence files of MCCFA President
Correspondence files of MCCFA and MCCFA Executive Director
Training materials of the Executive Director
Calculations re: Fair Share Fee
Documents re: MCCFA "Communications Link"
Committee Reports

IMPACE

Constitution and By-Laws

Budgets and Financial Statements
Public Filing re: Receipts and Expenditures
Board of Directors' Meeting Minutes
Annual Meeting Minutes
Proposed IMPACE Policy, August 26, 1976
Correspondence files of IMPACE chairperson
Treasurers Reports
Files of Sue Zagrebelny

Depositions Taken by Plaintiffs

Name, Date/Days	*Pages*
(1) Ralph Chesebrough, February 22-23, 1977 (2) [Executive Director, MCCFA]	266
(2) A. L. Gallop, February 24-25, 1977 (2) [Executive Director, MEA]	211
(3) Calvin Minke, March 4, 1977 (1) [Treasurer, MCCFA]	83
(4) James Durham, March 7, 1977 (1) [President, MCCFA]	133
(5) Donald Hill, March 9, 11-12, 1977 (3) [President, MEA]	303
(6) Fulton B. Klinkerfues, March 15, 1977 (1) [Chairperson, IMPACE]	176
(7) John Schutt, March 18, 1977 (1) [Treasurer, IMPACE]	51
(8) Alfred Provo, March 31, 1977 (1) [Treasurer, MEA]	92
(9) Herbert Brunell, April 19, 1978 (1) [Controller, MEA]	53
(10) Gene Mammenga, June 12-13, 1978 (2) [Director of Governmental Relations, MEA]	292
(11) Neil Sands, June 14, 1978 (1) [Past-President, Committee member, MCCFA]	162

(25) R. Dick Vander Woude, November 20, 1978 (1) 129
[Governmental Relations' Consultant, NEA]
(26) Robert Harman, November 28-29, 1978 (2) 484
[Associate Director, Governmental Relations, NEA]
(27) Susan Lowell, December 6-7, 1978 (2) 588
[Director, Communications, NEA]
(28) James Harris, December 8, 1978 (1) 68
[Past-President, NEA]
(29) Susan Zagrabelny, November 17, 1978 (1) 180
[Director, Northeast UniServ Unit, MEA]

NON-PARTY

Jack Henry Brebbia, (1)
[Campaign Staff—Jimmy Carter]
Richard Hutcheson, (1) 28
[Campaign Staff—Jimmy Carter]
Jeffrey Saunders, November 30, 1978 (1) 128
[Private Investigator]
Frank Crumbley, November 30, 1978 (1) 77
[Private Investigator]
Eric Scott Royce, December 27, 1978 (1) 126
Dr. Craig Schneier, December 28-29, 1978 (2) 425
Alice Morton, December 29, 1978 (1) 84
[Archivist, NEA]
Matthew Reese, January 12 & 19, 1979 (2)
[Public Relations Consultant to NEA]

As the above list demonstrates, discovery has been exhaustive and complete. The assertions in plaintiffs' brief that defendants have somehow unilaterally restricted the scope of discovery are absolutely unfounded. Any restriction of discovery has come only with the consent of plaintiffs' counsel following Rule 5 meetings. This is amply demonstrated by the

fact that during the entire period of active discovery spanning approximately two and one-half years, plaintiffs have never served upon this Court or raised to the Court's attention any refusal by defendants to answer any particular interrogatory or document demand to their complete satisfaction, save the instant motion.

Plaintiffs' suggestion that they were saving up their "complaints" until the day before the discovery deadline is a convenient reconstruction of history. In fact, even when presented with the opportunity at a late stage of discovery, plaintiffs' counsel did not relate to the Court any concerns regarding the inadequancy of plaintiffs' responses. See October 13, 1978 Pretrial Transcript. In addition, on December 20, 1978, after the completion of all discovery, save the depositions of Alice Morton and Matthew Reese, plaintiffs failed to relate any discovery problems to Magistrate Renner even though discovery matters were argued before him that day.

III. Plaintiffs' Request to Reopen Discovery Must Be Denied as the Allegations of Discovery Irregularities Are an Absolute Falsehood or Pure Argument Not Related to the Discovery of Facts.

At the October 13, 1978 pretrial, the major question before the Court was the completion of discovery and the methods by which the Court might address the factual issues which will be presented by the parties. During the pretrial the following colloquys occurred:

1. Following the Court's inquiry as to what remained to be discovered, Mr. Vieira responded:

> "Now as this summary prepared by Mr. Miller recounts, we have been since early in 1977, conducting depositions of various individuals who fulfilled leadership roles in the NEA, MEA and MCCFA: their political action com-

mittees and so on. We have conducted 17 depositions, we have two that are scheduled for next week.

"The defendants have also produced, as this document recounts, quite a bit of materials that we are now analyzing and putting into form. We think we are getting just about to the end of what we consider is necessary to the presentation of the case . . .

. . .

"Our plan is a very simple one, it is a straight-forward one, as soon as we have funished with Baker and McFarland next week we have at present a list of four or six people, at most six, that we would want to call to finish up the depositions.

"As Mr. Miller has suggested here in this summary, there are some documents, six requests for the production of documents that the NEA and MEA have yet to produce. We think we will have another couple of pages of document requests, especially after we have heard from McFarland and Baker.

"After that, as far as we are concerned, we think we will have adduced all the evidence that we believe is necessary to prove the contentions that we have made." October 13 Pretrial Transcript pp. 4-6.

2. In response to the Court's request regarding the amount of time necessary to complete the remaining discovery, Mr. Vieira stated:

". . . we ought to be able to get it done, if we really push it, by early December-mid-December. After that it is a matter of preparing a record and drawing up a motion. We have been doing that as we have been going along.

The Court: From your standpoint we will complete all discovery by the 31st of December?

Mr. Vieira: I think we can do that." October 13 Pretrial Transcript p. 10.

Subsequent to the pretrial conference, defendants cooperated in additional discovery far in excess of that outlined by plaintiffs' counsel at the pretrial. In all, fifteen depositions have been taken subsequent to October 13, ten of which were of employees or officers of the defendants. Moreover, a great volume of documents was produced during this period in an attempt to assist plaintiffs in completing discovery. In spite of this effort and repeated assurances made during the October 13, 1978 pretrial hearing, Mr. Vieira now glibly asserts that plaintiffs chose to "postpone any revelations to the Court, in the hope that defendants might at last cooperate in the development of the record of this case." Pl. Mem. 82.

Plaintiffs' admissions that they have "amassed" facts and "documented" their claims. (see, Pl. Mem. 45, 76 and 80), is basis, in and if itself, for dismissing their motion. However, not to go unrecognized is their obvious determination to ignore the Rule 37 procedure by which alleged failures to respond can be brought to the attention of the parties and the Court. Other courts, without respect to the merits of the motions to compel, have held that postponing "relevations" is totally inappropriate under the Federal Rules of Civil Procedure.

In *Zurzola v. General Motors Corp.*, 22 FRServ. 2d 1029 (E.D. Pa. 1975) the court noted that counsel for plaintiff failed to mention the discovery problems at pretrial conferences before the Court and hearings before the Magistrate:

> "The record reveals that on September 13, 1973, counsel for plaintiff attended a pretrial conference before the Honorable Thomas A. Masterson, then of this court, and did not mention the unanswered interrogatories. Judge

> Masterson's subsequent pretrial order indicated that discovery was completed. On September 19, 1974, plaintiff's counsel appeared at a status call of this court, but did not refer to the unanswered interrogatories. Neither did plaintiff's proposed final pretrial order, filed on October 3, 1974. On January 29, 1975, United States Magistrate Richard A. Powers, III, conducted a pretrial conference in this action and his subsequent pretrial report, like Judge Masterson's, stated that discovery was complete.
>
> * * *
>
> "This record shows plainly that for a period of more than 18 months, in numerous appearances and pleadings before this court, plaintiff never once raised the issue of the unanswered interrogatories and never once suggested that discovery was not complete."

In *Price v. Maryland Casualty Co.*, 561 F.2d 609, 611 (5th Cir. 1977) the appeals court affirmed the trial court's ruling denying plaintiff's motion to compel discovery stating:

> "At no time before the expiration of discovery did Price's counsel move . . . to compel responsive answers from any deponent who had refused to answer any questions. . . . Noting that plaintiff had been inexcusably dilatory in pursuing discovery . . . the district court denied plaintiff's motion. . . . While Fed. R. Civ. P. 37(a) does not specify a time limit in which procedures to compel discovery must be undertaken, courts interpreting that Rule have recognized that unreasonable delay can result in a waiver of a party's right to avail himself of the rule."

See also, *Butkowski v. General Motors Corp.*, 497 F.2d 1158 (2nd Cir. 1974).

While defendants' opposition to the motion to reopen discovery is based primarily on the fact that plaintiffs have

secured all discovery requested and that additional discovery is totally unnecessary, the failure to request any court assistance in a timely fashion is further reason to deny their motion.

A. Plaintiffs' Allegation That Defendants Have Failed to Properly Respond to Their Requests for Admission Is Unmeritorious.

As the affidavit of Eric R. Miller sets forth, counsel for both parties met in lengthy sessions regarding the requests for admission and the methods by which specific requests could be modified to comport with the facts. As a result of these sessions, defendants either admitted, qualified or denied, each of the 381 requests. The responses were served on March 31, 1978. Plaintiffs did nothing with respect to the claimed inadequacy of those responses until nine months later on the eve of the discovery deadline.[1] In fact, the responses were discussed at the October 13, 1978 pretrial wherein Mr. Vieira stated:

> "We presented the defendants with 300 or so requests to admit certain facts and they admitted some and they denied others and we had conferences with them over the various types of language that we wanted or they wanted.

---

[1] In *Anco Engineering Co. v. Bud Radio, Inc.*, 8 FR Serv. 2d 37a.12, Case 1, the Court in a similar setting ruled:

"The defendant filed on October 8, 1962 a second set of interrogatories. These were answered by the plaintiff on November 16, 1962. On August 19, 1963, the defendant filed a motion to compel further answers to 17 of these interrogatories. . . .

"I am of the opinion that the orderly administration of justice requires that a motion such as this must be filed within a reasonable time. Here the defendant has filed its motion to compel further answers to interrogatories *nine months* after the interrogatories were answered by the plaintiff. The basis for the motion is that the answers are evasive and incomplete. This motion could have been filed promptly so as not to further delay the date when this case would be tried.

"Therefore, the motion will be denied on the basis that under the facts peculiar to this case it was not filed within a reasonable time." (Emphasis added).

> Sometimes we compromised; sometimes they did; sometimes neither of us did." October 13 Pretrial Transcript p. 7.

Plaintiffs cannot now assert, after possessing the responses for nine months, that these responses somehow now support a massive reopening of discovery.

It would take days to explain the response to each of the 381 requests. Twenty-nine were admitted as written, 186 were partially admitted, 166 were denied. Responses to particular requests came after detailed review by clients and defendants' counsel, consisting of an analysis of (1) the terms as defined in the request, (2) the actual language of the request itself, and (3) a comparison of the language to the facts.

Initially, the scope of the definitions set forth in the requests posed an almost insurmountable hurdle. Two definitions are provided as examples:

> "Lobby" or "lobbying" means any activity the purpose of which is to influence *directly* or *indirectly*, the action of any government official, whether elected or appointed and includes any contact, direct or indirect, with any such official by any official staff person, member, or agent of NEA, MEA, MCCFA, NEA-PAC, IMPACE, or UniServ.
>
> "NEA organization" means NEA, its local and state affiliates, NEA-PAC and all analogous political-action committees of local and state NEA affiliates, and UniServ—and specifically includes MCCFA, MEA, IMPACE, and Minnesota UniServ.

As far as could be determined under the definitions provided, lobbying included any indirect contact with any government official, elected or appointed. Under that definition, voting constitutes lobbying. The definition of "NEA" organization" included literally hundreds of separate entities lumped together as if each were a mirror image of the other.

A sample of certain requests included within plaintiffs' brief demonstrates the obvious basis for the denials. For example, plaintiffs complain about the refusal to admit a number of requests which incorporate Request No. 42 by reference. Request No. 42 includes a lead-in clause and five separate sub-parts, too lengthy to repeat here, which state in essence that it is a fact that teacher organizations must control the legislature, the executive branch, all administrative agents, and the courts in order to collectively bargain successfully, and are willing to utilize any and all means at their disposal to attain that success. The request is simply untrue.

Another example is Request No. 41 which is reproduced here, with certain portions of the request underlined to highlight why it was denied.

> "Request No. 41. The *success* of the NEA organization's legislative program *requires* that the NEA and its state and local affilites exert the *maximum possible political influence* over the legislative, executive, and judicial branches of the state and federal governments: namely, insofar as it is possible, *directly controlling the composition of State legislatures and Congress*, and the identity of state governors and the President of the United States, through intervention and participation in partisan-political campaigns of candidates for election to public office; and *indirectly controlling the composition of the state and federal courts* through the exercise of influence or control over executive appointments and legislative confirmations."

A number of other requests were denied because they incorporated sub-parts of either Request No. 42 or very similar Request No. 57. See, Request No. 46, Request No. 60, Request No. 61, Request No. 62 which are listed on pages 56, 58, 59 and 60 of Plaintiffs' Memorandum respectively.

A similar examination of each particular request and response could be made, however, we do not believe that effort is warranted, particularly in light of plaintiffs' admission that defendants' responses to the requests to admit are "typical of their attitude throughout this case: namely, admit the bare facts that something was done or said by UTP, but denies its obvious significance." Pl. Mem. 94.

Defendants do not intend to admit to plaintiffs' opening and closing arguments. Defendants have admitted the "bare facts".

B. Plaintiffs' Allegation That Defendants Have Not Produced All Documents As Requested Is Totally Unsubstantiated.

Discovery requests relating to the specific correspondence files were uniformly limited, per Rule 5 meetings, to each person's specified correspondence files, provided the files were separately maintained. See affidavit of Eric R. Miller. This agreement was necessitated by the fact that certain deponents did not maintain separate correspondence files, but rather, filed all correspondence in the file to which the correspondence related. In order to fully and completely locate all such correspondence it would require the commitment of many person hours. It was agreed by plaintiffs' counsel that this effort was not necessary and that any correspondence request would be limited to identifiable correspondence files segregated from other files.

The scope of the requested discovery and the resolution is readily understandable to any person who has practiced law. Some attorneys keep "day files" of all of their correspondence which are maintained separately. Such a day file is easily locatable and easily produced. However, in the absence of such a file, the production of all correspondence ever authored or re-

ceived by an attorney would require the review of virtually hundreds of files. The same was true with respect to a number of deponents in this case. Such an effort was not required or expected by plaintiffs and all segregated correspondence files were produced per agreement. In addition, numerous individually requested documents and subject matter files from departments and individuals having a working relationship with deponents were produced and consisted of many documents authored or received by the deponent.

The plaintiffs also claim that the defendant deponents failed to participate in the identification of their correspondence files for purposes of production prior to their depositions. However, the transcript quotations cited by the plaintiffs uniformly confirm that each deponent's secretary or administrative assistant worked with defendants' counsel in identifying and collecting the requested documents. Pl. Mem. 155, 157, 157-58 and 164. In the case of Rosalyn Baker, she was not asked if her secretary was involved and Alice Morton specifically directed defendants' counsel to the documents which were responsive to the plaintiffs' request. Pl. Mem. 161. It is typical in the real world for a secretary or administrative assistant to be more knowledgeable about the files and filing system and several of the deponents indicated this during their testimony.

Plaintiffs assert that only a portion of certain files have been produced and that the balance of these files were improperly withheld by defendants. The plaintiffs support this allegation by assuming how many drawers are in a file cabinet (Pl. Mem. 165), assuming that *all* of the documents contained in an *estimated* number of file drawers were responsive to the plaintiffs' request (Pl. Mem. 167, 168 and 169) when in fact the plaintiffs' requests were limited to the time frame of 1971

to the present and did not include all of the types of documents maintained by the deponents.

The plaintiffs also conveniently failed to disclose in conjunction with their allegations concerning the files of Ken Bresin (Pl. Mem. 166-67) the specific agreement arrived at in a Local Rule 5 meeting of counsel that since Mr. Bresin did not maintain a correspondence file there would be no documents produced prior to his deposition. (See, Affidavit of Eric R. Miller and Exhibit K attached thereto).

The plaintiffs allege that documents concerning Project 18 and the Youth Franchise Coalition were improperly withheld in conjunction with the deposition of Alice Morton. Pl. Mem. 186-87. However, a review of the exhibits to Plaintiffs' Memorandum (Exhibits No. 246 and 247) clearly indicates that these activities were solely in regard to gaining the right to vote for 18 year old citizens and, therefore, were not relevant to the scope of the subpoena duces tecum which covered only documents concerning the political campaigns of candidates for public office. Pl. Mem. 149.

Finally, the plaintiffs, apparently seriously rely on their observations that one file folder was "turned in the opposite direction from the other file folders" and that a document "was torn in the corner" to support the allegation that documents have been withheld. Pl. Mem. 174-75. Such observations serve only to reflect the delusions of the crusade in which plaintiffs' counsel participate.

It must again be stated that the vast majority of document production was accomplished prior to the October 13, 1978 pretrial conference and the plaintiffs in no manner indicated dissatisfaction to defendants' counsel or the Court. Plaintiffs again had the opportunity to express their concern in the hearing before Magistrate Renner on December 20, 1978, by which

time all of the depositions and the related production of documents had been completed except for Alice Morton and Matthew Reese and yet the plaintiffs raised no objection.

C. Plaintiffs' Ambitions to Redepose Certain Witnesses, and to Depose Additional Persons Are Unjustified.[2]

The crux of plaintiffs' request to redepose a large number of witnesses rests upon their belief that they, rather than the Court, are entitled to rule on the credibility of a particular witness or the weight to be given to a witness' testimony. The short answer to plaintiffs' contention is obvious: plaintiffs may impeach any witness they desire from the wealth of material at their hand.

It is submitted, however, that plaintiffs' will not be as successful at impeachment as the length of their one hundred-plus page argument on this subject might (without reading) suggest. A cursory examination of its pages reveals numerous flaws in plaintiffs' analysis of the testimony. It is not appropriate or necessary to provide the Court with an item by item refutation of plaintiffs' argument. What follows is a summary, supported by selected examples from plaintiffs' brief, of the

---

[2] When faced with a similar argument in *United States v. DeVincentis*, 30 FRD 71 (E.D. Pa. 1962) the court stated:

"[1] Plaintiff . . . asks the Court to direct the witnesses named to answer specific questions, and, in addition, to answer general questions on depositions, they having previously appeared and been examined extensively on the issues involved in the case. Plaintiff has not shown us in his argument or brief any authority for the taking of general depositions under the provisions of Rule 37 . . .

* * *

"The issue as we see it is whether the defendant now, in the light of the former depositions, interrogatories and admissions, should be compelled to again produce the witnesses for either general depositions or compelling answers to specific questions. In our opinion, to direct them to do so would constitute harassment and an undue burden on the defendant without justification for the reasons above set forth."

fundamental errors in plaintiffs' approach to the testimony taken in this case.

In the introductory portion of their brief, plaintiffs note that their theory in this case views the MEA, NEA, IMPACE, etc., as a single, "integrated" organization "UTP". A reading of the entire brief provides a greater understanding of plaintiffs' view of these organizations: defendants are a highly centralized, well-oiled machine relentlesssly plotting the political destiny of the nation. Where a witness' testimony suggests a lesser degree of organizational efficiency or formality, plaintiffs charge the witness with lying. Where witnesses such as Messrs. Bresin and VanderWoude testify to their work in a political campaign, they are charged with telling the truth only because defendants "feared that plaintiffs knew something" (Pl. Mem. 266) or because a "last-minute arrival", (Pl. Mem. 235) allowed inadequate time for fabricating the complex web of lies imagined by plaintiffs. It is all part of "the conspiracy". Given plaintiffs' unyielding dedication to this perception of defendants, Mr. Vieira's comment during the McFarland deposition is appropriate: "We live in different worlds." (Pl. Mem. 199.)

As an example, plaintiffs dwell on the existence or nonexistence of "evaluations of the involvement of UTP members in the Carter-Mondale campaign." Pl. Mem. 237-42. The testimony of Harman, McFarland, Lowell, Weissman and VanderWoude is consistent with the fact of some informal discussion, from time to time, concerning the status of this activity. Plaintiffs' perception of defendants, however, prevents their acceptance of anything short of a formalized, chain-of-command reporting procedure. A similar fallacy exists in plaintiffs' discussion of post-election "reports". Pl.

Mem. 242-46. Because witnesses do not testify to such a system, plaintiffs charge them with lying.

Plaintiffs' perceptions of defendant organizations extend to the abilities attributed to staff personnel: persons deposed are imagined to have computer-like recall of broad sets of facts. Mr. McFarland must be lying because he cannot remember a two-year old telex. Pl. Mem. 198-99. Mr. Harris must be lying because he cannot recall a four-year old document. And counsel for plaintiffs seem more concerned with "establishing" the "fact" of the lien than obtaining substantive information, because he refuses to show Harris a document which might refresh his memory:

> "Mr. Goodwin: If you want to show us the NEA document—
>
> Mr. Vieira: No. You are not going to see this document. This is going into the Court along with a number of others. We won't bother to show you everything we have. We will let you sink deeper and deeper into the quicksand.
>
> Mr. Goodwin: So I understand—You are reading from a document and asking questions about the document to the witness. Is that correct?
>
> Mr. Vieira: No. It is not correct. I don't intend to answer any more questions." Pl. Mem. 198.

Further, plaintiffs suppose staff personnel to recall with special detail matters believed to be relevant to plaintiffs' case. Mr. McFarland must be lying because he has no detailed recollection of an alleged "program" of UniServ campaign participation "which should have impressed almost anyone who learned of it". Pl. Mem. 236. Matters viewed as "impressive" to those dedicated to plaintiffs' cause, of course, are not universally so perceived.

Plaintiffs' use of language is pervaded by their ideological position (as is evidenced in their Rule 36 requests). In addition, while plaintiffs are unwilling to forgive any imprecision in wording used by defendants (it is all part of "the conspiracy"), they purport to demonstrate contradictions through changing the meaning of terms. For example, plaintiffs make much of Mr. Mammenga's statement that he was not a "volunteer" of any particular candidate campaign. Pl. Mem. 219-22. Plaintiffs fail to note that earlier in that deposition, plaintiffs' counsel defined the "volunteer" as being one of two things: a political organizer "who would come in and help me set up a campaign," or a person who "would do the nuts and bolts duties in terms of sitting at the telephone banks". Mammenga Depo. p. 220-221. Understood in this fashion (and without arguing the fact of this explanation), Mammenga's testimony is not inconsistent with subsequent statements cited by plaintiffs indicating that Mammenga may have had some contact with the Carter-Mondale campaign. Moreover, in attempting to establish the attempted "conspiracy", plaintiffs went so far as to depose members of the White House staff. Despite extensive questioning these officials knew nothing of any participation by Mr. Mammenga in the campaign.

Similarly, plaintiffs frequently purport to "impeach" a witness by quoting a statement dealing with a different subject. For example, Ms. Lowell's lack of recollection concerning solicitation of campaign workers by staff is "contradicted" by her later statement concerning actual compaigning by teachers, which is supposedly "inconsistent" with Mr. Harman's lack of recollection that certain types of staff were "loaned" to Carter-Mondale campaign. Pl. Mem. 225-27.

Such is the substance of plaintiffs' supposed conspiracy. However, one is inclined not to doubt plaintiffs' sincerity. Plaintiffs' response to the "conspiracy" has been a counter-

attack wherein a small army of private investigators was sent to Minnesota to surreptitiously observe and question personnel connected with defendants. The ethical propriety of this activity is addressed in a separate motion. Plaintiffs rely on reports received from these investigators to suggest further lying. Pl. Mem. 259-97. Assuming arguendo the truth of Investigator Saunders' reports, the significance of any inaccuracies in Messrs. Bresin's and VanderWoude's testimony are less than startling. How many evenings were Bresin and VanderWoude at the Fraser phone bank—two or three? Did VanderWoude look up names in a telephone directory on the evenings in question or didn't he? Is Bresin's failure to work on an official basis for Fraser explained by an MEA policy or by advice from NEA attorneys? It is difficult to see how the alternatives presented by this last question are inconsistent, let alone proof of some "conspiracy". In all cases, any inconsistency is trivial and in the final analysis is for the Court to weigh.

Plaintiffs have enjoyed massive discovery in this case. Depositions have included numerous people within the defendant organizations. In addition plaintiffs have deposed individuals outside the organization—including members of the White House staff. Plaintiffs have the tools to impeach testimony they believe to be untrue to the extent those tools exist and the testimony is impeachable.

It is clear that plaintiffs don't like much of what they hear. Additional depositions and redepositions must not be ordered, however, simply because discovery has not established defendant organizations as the type of entity which plaintiffs believe them to be.

CONCLUSION

It is obvious from reading Plaintiffs' Memorandum that the ideological view point of plaintiffs has prevented their objectively considering the scope of discovery. A cursory reading of the 296 page Memorandum, if not the length of it alone, demonstrates the extensive lengths to which the plaintiffs will proceed in attempting to prosecute their case. While defendants do not begrudge them the opportunity to present their viewpoints to the Court and to adequately discover all facts which relate to those viewpoints, the discovery produced comprehensively responds to all requests they have made.[3]

Defendants respectfully request the Court to refuse to modify its October Order terminating discovery as of December 31, 1978. Plaintiffs have had complete and thorough discovery. Not once throughout the course of discovery, save the filing of this motion, have plaintiffs come to the Court complaining of unfair restrictions on discovery by defendants. Further, during the October 13, 1978 pretrial, defendants' counsel represented to the Court that it would complete discovery by mid-December, 1978, and that the December 31, 1978 discovery deadline was totally compatable with their needs. No basis exists to reopen discovery along the lines suggested by plaintiffs particularly where,[4] as here, plaintiffs

---

[3] If anyone has legitimate grounds for complaint concerning discovery, it is defendants. Despite the modest nature of defendants' discovery attempts, plaintiffs have failed to respond to defendants' outstanding interrogatories.

[4] The *Seay v. McDonnell Douglas Corp.* cases cited on pp. 323-25 of Plaintiffs' Memorandum as authority supporting their motion to reopen discovery do not even address discovery issues. The unpublished *Seay* opinion attached to plaintiffs' affidavit A-15 only requires production of documents which were produced long ago in this case.

have consciously chosen not to bring their "relevations" to the attention of the parties or the Court in a timely fashion.

OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By Eric R. Miller
Keith E. Goodwin
Donald W. Selzer, Jr.
1700 First National
Bank Building
St. Paul, Minnesota 55101

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
Civ. No. 4-74-69

LEON W. KNIGHT, et al.,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Defendants.

AFFIDAVIT OF ERIC R. MILLER

State of Minnesota
County of Ramsey—ss.

ERIC R. MILLER, being first duly sworn, states and alleges as follows:

1. He has been one of the defendant employee organizations' attorneys of record since the initiation of this litigation.

2. He did personally review all of the Interrogatories and Requests for Production of Documents when served by the plaintiffs on the defendants.

3. He participated in all of the meetings conducted under Rule 5 of the Local Rules of Practice for the United States District Court for the District of Minnesota in regard to the plaintiffs' Interrogatories and Requests for Production of Documents.

4. At least one Local Rule 5 meeting was conducted in regard to each set of plaintiffs' Interrogatories and each of the plaintiffs' Requests for Production of Documents and that many of these meetings were one full working day in length.

5. During the Local Rule 5 meetings defendants' counsel explained on many occasions the difficulties they had with the plaintiffs' discovery requests in light of their broad scope, uncertain language and the size and complexity of the defendant employee organizations, particularly the National Education Association.

6. Plaintiffs' counsel frequently indicated agreement to narrowing the scope of their Requests for Documents or eliminating certain portions of the requests entirely during the local Rule 5 meetings.

7. Substantial correspondence was generated by counsel for plaintiffs and defendants describing the agreements reached in the Local Rule 5 meetings concerning the documents to be produced by the defendants in response to the plaintiffs' Interrogatories and Requests for Documents. A small sample of this correspondence is attached hereto as Exhibits A through L.

8. Defendants' counsel, on several occasions, explained to plaintiffs' counsel that many of the defendants' officers and employees did not retain in their own files many of the documents they prepared or received but rather the documents were provided to another persons for their files or filed in a departmental file. Plaintiffs' counsel specifically expressed understanding and agreement that the defendants would be unable to identify and collect every document authored or received by certain officers and employees of the defendants over the more than 7 year time period covered by the litigation.

9. Specifically in regard to the files of certain officers and employees of defendants who were to be deposed by the plaintiffs it was understood and agreed to be plaintiffs' counsel that the defendants would not be responsible for identifying and collecting every document authored or received by each such deponent but rather produce only the correspondence specifically filed or designated as correspondence. This understanding is exemplified by the letter of William Mullin dated November 7, 1978, and attached as Exhibit K.

10. In addition to the correspondence files of each deponent numerous individually identified documents and subject matter files from related departments were produced which contained extensive documentation prepared or received by the respective deponent.

11. It is believed that virtually every individual paragraph of every request for the production of documents served by the plaintiffs was reviewed and resolved during the many Local Rule 5 meetings.

12. At no time during the Local Rule 5 meetings or subsequent to the actual production of the agreed upon documents

did plaintiffs' counsel indicate objection to the agreements reached or the documents produced.

13. Upon receipt of the plaintiffs' requests for admission a series of extensive meetings between counsel for plaintiffs and defendants were conducted and consumed at least 7 full working days. (See report of counsel to the Court dated and attached as Exhibit M.) These meetings were conducted under the spirit of Local Rule 5.

14. The purpose of these meetings were to clarify the language, scope and intent of many of the requests for admission. Counsel for the parties each re-drafted many of the requests as a result of the meetings and these revisions were reviewed in additional subsequent meetings.

15. Plaintiffs' counsel ultimately decided to revert to the original requests for admission with few exceptions and the defendants provided responses to them.

ERIC R. MILLER

Subscribed and sworn to before me this 26th day of January, 1979. Mariann Marculus, Notary Public, Ramsey County, Minnesota. My Commission Expires July 30, 1985.

EXHIBIT A

Letterhead
LAW OFFICES
MULLIN, WEINBERG & DALY, P.A.

MEMORANDUM

To: Eric R. Miller, Esq.; Keith E. Goodwin, Esq.
Oppenheimer, Wolff, Foster, Shepard and Donnelly
W-1781 First National Bank Building
Saint Paul, Minnesota 55101

From: William E. Mullin

Date: July 29, 1976

Re: Leon Knight, et al. vs. Minnesota Community
College Faculty Association, et al.
Civil 4-74-659
Our File Number 2447

This is to confirm the agreements reached in our recent meetings covering your objections to plaintiffs' interrogatories.

You will provide (or, where indicated, are considering providing) the following information in response to plaintiffs' interrogatories. This memo discusses first the plaintiffs' Second Set of Interrogatories and secondly, the plaintiffs' First Set of Interrogatories, since this was the order of our discussion.

PLAINTIFFS' SECOND SET OF INTERROGATORIES:

Interrogatory No. 1. You will provide the public filings of IMPACE. You will advise whether you will consider providing information concerning the activity of employees of IMPACE. You will consider providing records of MEA, NEA and MCCFA support of candidates, and information concern-

ing support of candidates by MEA, NEA and MCCFA employees in the scope of their employment, but limited to senior staff.

Interrogatory No. 2. You will consider providing documents relating to orders or directions given to officers, directors or senior staff of MEA, NEA, MCCFA, and all employees of IMPACE, to support candidates or advocate positions concerning public affairs, including but not limited to public educational policy. You will supply documentation of MEA and MCCFA endorsements of candidates as well as endorsement of positions taken by MEA and MCCFA in public affairs matters.

You will consider supplying information concerning activity by the MEA, NEA, MCCFA, or IMPACE organizations on behalf of candidates or positions concerning public affairs (e.g., mailings to members and officers, memoranda to members and officers requesting them to "spread the word" on a particular candidate or issue, requests from a parent body asking local bodies to adopt resolutions concerning a particular candidate or issue).

You will consider supplying information concerning activity of officers and directors and senior staff of MEA and NEA in the scope of their employment, concerning advocacy of positions of one organization on issues.

Interrogatory Nos. 3 and 4. You will supply copies of the publicly-filed reports of all MEA, NEA, MCCFA and IMPACE lobbyists in Minnesota.

You will supply copies of written reports made by all of these registered lobbyists to the Boards of Directors, executive committees or officers of MEA, NEA, MCCFA and IMPACE, and minutes of meetings where oral reports were recorded.

Interrogatory No. 5. You will consider supplying copies of the expense accounts of the registered lobbyists. (I also understand that the financial statements of the various organizations will provide some information concerning the amount of money spent on lobbying.)

Interrogatory No. 6. You will provide us with an answer which states, in essence, that the registered lobbyists' offices at the MEA building uses MEA secretaries and make use of MEA office facilities with respect to all lobbying activity carried out by them, and that NEA lobbyists use NEA personnel and facilities in the same manner.

Interrogatory Nos. 7 and 8. You will disclose in general terms the training programs, seminars, and workshops conducted by the defendant organizations to develop lobbying skills. You are considering turning over the files of MEA, NEA, MCCFA or IMPACE containing the material distributed at such training programs, seminars, or workshops. You are also considering telling us the form in which these files are kept, and giving us access to these files.

You will describe in a general way the programs on lobbying and public advocacy which have been attended by MEA, NEA, MCCFA and IMPACE personnel. (The lobbyists' expense accounts may show some of this information.)

Interrogatory No. 9. You advise that some of the documents supplied in answer to other interrogatories will, in part, provide the documents whose identification is called for in Interrogatory No. 9.

Interrogatory No. 10. You will supply financial statements and budgets of MEA, NEA, MCCFA and IMPACE. You will consider supplying further documentation on segregation in MCCFA between expenses for activities classified as "negotiations and administration of grievance procedures" and expenses for activities not so classified.

Interrogatory No. 11. After the budget materials referred to herein under Interrogatory No. 10 have been supplied, you will discuss further what, if any, information will be supplied.

PLAINTIFFS' FIRST SET OF INTERROGATORIES:

Interrogatory No. 1(a). This interrogatory is not objected to.

Interrogatory No. 1(b). You will identify the directors, officers and senior staff of MEA, NEA and MCCFA, and all of the employees of IMPACE.

Interrogatory Nos. 1(c) and 1(d). No information will be supplied except that you advise that budgets and financial statements (see above under Second Set of Interrogatories, Interrogatory Nos. 10 and 11) may provide some of the information called for in this interrogatory.

Interrogatory Nos. 1(e) through 1(g). No information will be supplied, at least for the present.

Interrogatory No. 1(h). Organizational charts will be supplied for MEA, NEA and MCCFA and IMPACE, together with charts indicating the committees of these organizations, or a description of the functions and responsibilities of the committees.

Interrogatory No. 1(i). You advise that the organizational charts to be supplied under Interrogatory 1(h) will, in part, be responsive to this interrogatory.

Interrogatory No. 1(j). You advise that the organizational charts to be supplied will, in part, be responsive to this interrogatory.

Interrogatory No. 2(a). This interrogatory is not objected to. You will supply copies of the constitutions, charters, by-laws, rules and regulations of MEA, NEA, MCCFA and IMPACE, together with minutes of board of directors meetings and committee meetings of these organizations. You will

advise whether there are executive committee minutes which are in existence for these organizations, and whether these materials will be supplied.

Interrogatory No. 2(b). See statements under Interrogatory 2(a) above.

Interrogatory No. 2(c). The requested synopses and resumes will not be provided. However, you advise that some of the material to be supplied under other interrogatories may be responsive to the subject matters covered in Interrogatory 2(c). In addition, rules, regulations, and statements of policy of IMPACE, MEA, NEA and MCCFA with respect to the subject matters covered in Interrogatory 2(c) will be supplied, including rules for authorizing expenditures.

Interrogatory Nos. 2(d) (1) and (2). These interrogatories are not objected to.

Interrogatory No. 2(d) (3). This interrogatory will not be answered.

Interrogatory No. 2(d) (4). You advise that this interrogatory will be answered, in part by documents supplied in response to other interrogatories.

Interrogatory No. 3(a). The information called for by this interrogatory will be provided.

Interrogatory No. 3(b). This information will be provided.

Interrogatory No. 3(c). This information will be provided.

Interrogatory No. 3(d). You will state how the amount of the initiation fees and dues and other fees are determined, and the name of the person responsible.

Interrogatory No. 3(e). The information called for by this interrogatory will not be supplied.

Interrogatory No. 3(f). Documents pertaining to the information provided in response to answer to Interrogatory No. 3(a) through 3(e) will be provided.

Interrogatory No. 4. You have requested further explanation concerning what the interrogatory calls for. Pending such explanation, you are considering supplying, at a minimum, the information called for in Interrogatory Nos. 4(a) and 4(b), except that membership lists will not be supplied.

Interrogatory No. 5. A list of bookkeeping accounts maintained by each organization will be provided, and any records available on how expenditures were classified as within the term "negotiation and administration of grievance procedures," will be provided. (If no such records are available, I assume you will provide me with an answer so advising me.)

Interrogatory No. 6. Memoranda and other records concerning allocation of expenditures into the category "negotiation and administration of grievance procedures" will be supplied.

Interrogatory No. 7. The MCCFA budget, and the name of the person primarily responsible for preparing the budget, will be provided (see above). You will consider providing the same information for MEA, NEA and IMPACE.

Interrogatory No. 8. You will provide, in response to answers to other interrogatories, annual financial statements for MCCFA, MEA, NEA and IMPACE. You will also provide state and federal filings of IMPACE under state and federal campaign laws, and tax returns of each organization.

Interrogatory No. 9. You will furnish documents and information relating to the request for the deduction of fair share fees from wages due the plaintiffs in this action.

Interrogatory No. 10. You will provide financial statements of NEA, MCCFA, MEA and IMPACE. You will provide an answer which shows that IMPACE received no monies or fees from dues or fair share. You will also consider telling us how MCCFA dues are apportioned among various or-

ganizations. You will state what the dues have been, and will consider advising us on how the dues have been apportioned among MCCFA, MEA, NEA and IMPACE.

Interrogatory No. 11. Listings of accounts of NEA and MCCFA will, you advise, help to establish this information. You will list the major functions of each organization, and the amount of money spent for each function by each organization. You will also provide information for each organization as to who receives the monies, who expends the monies, and who makes approvals of expenditures.

Interrogatory No. 12. You will provide a copy of the MEA Board of Directors' resolution authorizing the assessment of fair share fees at 100% of member's dues. You will also supply resolutions of MCCFA, MEA and NEA, and their Boards of Directors with respect to fair share, if such are in existence. You will supply minutes of all meetings where such resolutions were discussed, and staff memoranda to the respective Boards of Directors discussing the assessment of fair share fees.

Interrogatory No. 13. You will supply copies of minutes of MEA, NEA, MCCFA and IMPACE conventions and Boards of Directors in which these bodies are recorded as taking positions on any subject relating to public affairs, including, but not limited to, education policy. You will supply resolutions of the MEA convention, Board of Directors, or MEA Executive Committee, not included in minutes, espousing such positions. You will consider supplying documents of each organization concerning training of lobbyists and activities of each organization in public affairs.

Interrogatory No. 14. If the financial statements to be supplied in response to other interrogatories don't show the

amounts being paid by MCCFA to MEA and NEA and by MEA to NEA, you will consider giving us this information.

Interrogatory No. 15(a). You advise that the financial statements to be supplied will show the amounts called for in this interrogatory.

Interrogatory No. 15(b). You will consider providing copies of agreements between MCCFA and NEA, MCCFA and MEA, MEA and NEA.

Interrogatory No. 15(c). You will consider disclosing the amounts paid under the agreements (if not shown in the financial statements to be supplied).

Interrogatory No. 16. You will give us an answer stating that all fair share fees received by MCCFA are being held in a bank in an escrow account; you will not, however, disclose how much is in the account or the name of the bank where held.

Interrogatory No. 17. See above under answer to Interrogatory No. 16.

Interrogatory No. 18. You will supply the information called for in this interrogatory if readily available. If this information is not supplied, you will advise as to the location and organization of the files of your respective clients where this information is.

Interrogatory No. 19(a). The information called for by Interrogatory No. 19(a) will not be supplied.

Interrogatory No. 19(b). You will supply copies of the MCCFA Green Sheets. You will consider supplying copies of the MEA, Advocate and other notices, information sheets, and other communications sent to plaintiffs.

Interrogatory No. 19(c). You will consider advising what else is done to advise members of the bargaining unit of the matters listed in Interrogatory No. 19(b), other than the steps

disclosed in the documents to be supplied under Interrogatory No. 19(b).

Interrogatory No. 19(d). No information will be provided in response to Interrogatory No. 19(d).

Interrogatory No. 19(e). You will provide the names of arbitrators and fact finders selected and paid by MCCFA.

Interrogatory No. 19(f). You will provide a general statement of the legal fees paid by MCCFA in matters such as challenges to the bargaining unit and "negotiations and administration of grievance procedures."

Interrogatory Nos. 20(a) and 20(b). You will provide us with an answer describing the procedures, if any, which were or are now available by which an employee of the bargaining unit may learn how and for what purposes monies received by MCCFA is spent.

Interrogatory No. 20(c). No information will be supplied.

Interrogatory No. 20(d). This interrogatory will be answered.

Interrogatory No. 20(e). This interrogatory will be answered at a minimum by providing the titles of the persons whose identity is called for the interrogatory.

Interrogatory Nos. 21(a) (1) (a) through 21(a) (1) (h). This interrogatory will not be answered because of objections to the language therein. [As I understand it, the principal objections are to the word "purported" in 21(a) and to the word "union partisans" in 21(a) (1) (h).]

Interrogatory No. 21(a) (2) and No. 21(a) (3). My notes are silent on these interrogatories. Apparently we omitted to discuss them. I would appreciate your letting me know your position on these.

Interrogatory No. 21(b). This interrogatory will be answered in its entirety.

Interrogatory No. 21(c). This interrogatory will be answered.

Interrogatory No. 21(d). This interrogatory will be answered.

Interrogatory Nos. 22(a) through (i). This interrogatory will be answered, but only information regarding the plaintiffs will be supplied.

Interrogatory No. 22 (j). You will advise us as to the form in which your clients keep files in which information might be found to answer this interrogatory.

Interrogatory No. 23. This interrogatory will not be answered.

Interrogatory No. 24. This interrogatory will not be answered.

Interrogatory No. 25. The documents referred to in this interrogatory will be produced.

Interrogatory No. 26(a). You will consider supplying documents which describe the functions and responsibilities of the committees referred to in this interrogatory.

Interrogatory No. 26(b). No information will be supplied.

Interrogatory No. 26(c). No information will be supplied.

Interrogatory No. 27. No information will be supplied.

Interrogatory No. 28. You will provide us with an answer which states that "meet and confer" and "meet and negotiate" meetings have been held between the MCCFA and the Board.

Interrogatory No. 29. You will advise us as to the form in which your clients keep files concerning the grievances.

Interrogatory No. 30. This interrogatory is not objected to and will be answered.

Interrogatory No. 31. This interrogatory will not be answered.

Interrogatory No. 32. This interrogatory is not objected to.

Interrogatory No. 33. You will consider answering this interrogatory, including supplying documents whose identity is called for in Interrogatory No. 33(b) (3) and Interrogatory No. 33(b) (4).

Interrogatory No. 34. This interrogatory will be answered, if the information is readily available.

Interrogatory No. 35. You will consider answering this interrogatory, with the understanding that only the main or principal benefits will be listed.

Interrogatory No. 36. You are considering answering this interrogatory.

Interrogatory No. 37. You have no objection to this interragotory.

You have indicated that the above information will be supplied for the periods from June 1, 1971 to the present, with the exception that, with respect to lobbying activities, you will acknowledge that MEA lobbied for the enactment of PELRA prior to June 1, 1971. You have indicated that at least some of the information will be supplied without a protective order, and some will not be supplied without a protective order entered either on your motion or by a stipulation. At our next meeting, which I hope will be next week, we will discuss the terms of such a stipulation.

I have indicated that I do not at this point agree that any of the above offerings of information by you constitutes a satisfactory answer to the interrogatories. At this point, no interrogatories have been withdrawn, except that I have agreed that where documents provide the information called for in

an interrogatory, the documents may be supplied, with a clear statement specifying the interrogatory to which documents relate.

After the information referred to above has been supplied, I will advise you as to what additional information is needed. It is hoped that we can eliminate or substantially limit our disagreements by this process.

Thank you for your cooperation in this matter.

WEM/ska

EXHIBIT B

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY

August 17, 1976

Mr. William E. Mullin
Mullin, Swirnoff & Weinberg
2200 Dain Tower
Minneapolis, Minnesota 55402

Re: *Knight, et al. v. MCCFA, et al.*

Dear Mr. Mullin:

We are in receipt of your memorandum of July 29 with respect to our recent meetings concerning the plaintiffs' interrogatories and our objections. We have previously indicated to you that at this point we consider that our objections still stand except where they have been expressly withdrawn and that the offering of any information or documents in response to portions of various interrogatories does not mean that we are willing to provide answers or documents in response to the remaining portions of various interrogatories.

Your memorandum indicated that we will provide information or documents commencing with June 1, 1971. This is not

accurate. We indicated that the earliest point in time as to which some of the interrogatories may be relevant would be July 1, 1971 when PELRA became effective. We have also indicated that the earliest possible date for interrogatories relevant to the fair share fee would be July 1, 1973. We did discuss whether or not there had been any "lobbying" in support of the enactment of PELRA, but until that term has been satisfactorily defined and some actual language is proposed concerning any such involvement of my clients, we obviously cannot commit ourselves to any such undefined agreement.

We have provided our comments concerning your analysis of our discussion of each of the interrogatories commencing with the second set and followed by the first set. We should note that we amplified our objections and concerns with respect to the definitions in both sets of interrogatories and it is our understanding that the definitions are not considered binding as stated and that you will provide clarification before any extensive answers or documents are produced.

Plaintiffs' Second Set of Interrogatories:

Interrogatory No. 1—We will provide the public filings of IMPACE which are readily available for inspection by the general public. We will advise you whether we will consider providing information concerning the activity of IMPACE employees and we are considering providing any MEA, NEA, or MCCFA records evidencing support of any candidates if indeed any such activity has occurred. You agreed to review the scope and meaning of Interrogatory 1(B).

Interrogatory No. 2—We are in fundamental agreement with your statements concerning this interrogatory except that we continue to be concerned about the scope of the meaning of "public affairs." We are not certain of the meaning of your third paragraph in that it appears to be duplicative of portions of the first two paragraphs.

Interrogatory Nos. 3 and 4—We shall supply the publicly filed reports of all MEA, NEA, MCCFA, and IMPACE lobbyists in Minnesota where such reports are readily available to the general public. We take exception to the second paragraph of your analysis in that we believe we agreed to review the nature and extent of any written reports by registered lobbyists in light to the anticipated burden of such an exercise particularly in regard to the NEA. We presently are reviewing this matter.

Interrogatory No. 5—We are in fundamental agreement with you first sentence but contrary to your second sentence we did not indicate that any annual financial statements would provide separate information concerning the amount of money expended in regard to "lobbying."

Interrogatory No. 6—We indicated that it was our *understanding* that MEA's registered lobbyists utilize portions of the MEA building and staff in conjunction with their activities. We are making an inquiry with respect to this interrogatory as it applies to the NEA.

Interrogatory Nos. 7 and 8—We are in fundamental agreement with your analysis.

Interrogatory No. 9—We are in fundamental agreement with your analysis.

Interrogatory No. 10—We will provide the annual financial statements and budgets for the MEA, NEA, MCCFA, and IMPACE. We indicated our continuing concern with respect to calling for a legal conclusion as well as the definition of "lobbying" which is a specific provision of this interrogatory.

Interrogatory No. 11—We are in fundamental agreement with your analysis.

Plaintiffs' First Set of Interrogatories:

Interrogatory No. 1(a) (b)—This interrogatory has been answered. We shall attempt to identify the directors, officers,

and senior staff for the MEA and the MCCFA. We believe we indicated we would review the nature and extent of such a project with respect to the NEA and advise you accordingly. We do not recall having agreed to provide a list of all IMPACE employees but we will undertake to identify the scope of such a project and advise you.

Interrogatory Nos. 1(c) and (d)—We are in fundamental agreement with your analysis in light of the requirements of these sections.

Interrogatory Nos. 1(e) through (g)—We are in fundamental agreement with your analysis in light of the requirements of these sections.

Interrogatory No. 1(h)—To the extent that organizational charts for the identified organizations are still in existence, we shall provide them.

Interrogatory No. 1(i)—We are in fundamental agreement with your analysis.

Interrogatory No. 1(j)—We are in fundamental agreement with your analysis.

Interrogatory No. 2(a)—We take exception to your comment that we have not objected to this interrogatory. We did indicate that we were willing to produce and have produced the constitutions and bylaws for some of the identified organizations. The balance of the constitutions and bylaws will be produced. We do not believe we agreed to a blanket understanding to produce the minutes for all meetings of the boards of directors and committee meetings of these organizations. Such a project would involve an extensive amount of burden and clearly not all such minutes for all such meetings are relevant to your complaint. We would suggest that upon reviewing the organization charts and other documents to be produced for the identified organizations you indicate whether you are still interested in pursuing these documents and if so for which

organizations and which committees. We are reviewing whether there are executive committees for the identified organizations and whether minutes are maintained.

Interrogatory No. 2(b)—See our comments under Interrogatory 2(a) above.

Interrogatory No. 2(c)—We are in fundamental agreement with your analysis.

Interrogatory Nos. 2(d)(1) and (2)—We shall provide answers to these interrogatories.

Interrogatory No. 2(d)(3)—We shall provide an answer to this interrogatory.

Interrogatory No. 2(d)(4)—We are in fundamental agreement with your analysis.

Interrogatory No. 3(a), (b), and (c)—These interrogatories have been answered.

Interrogatory No. 3(d), (e), and (f)—We are in fundamental agreement with your analysis.

Interrogatory No. 4—We are in fundamental agreement with your analysis.

Interrogatory No. 5—We agreed to provide you with a list of bookkeeping accounts which would include accounts relevant to negotiations and grievance procedures. It was our understanding that you would examine these accounts and we would attempt to determine the extent of the documentation which you want produced, and we would further jointly review the problem.

Interrogatory No. 6—See comments concerning Interrogatory No. 5 above.

Interrogatory No. 7—We are in fundamental agreement with your analysis.

Interrogatory No. 8—We are in fundamental agreement with you analysis except that in light of our willingness to

produce the identified documents we are reviewing the necessity and relevance of producing tax returns. We shall advise you of our position on this latter matter.

Interrogatory No. 9—We are in fundamental agreement with your analysis.

Interrogatory No. 10—We are in fundamental agreement with your analysis except we note we have already provided the dues structure in our answer to Interrogatory 3(b).

Interrogatory No. 11—We agreed to provide a listing of accounts. We do not recall agreeing to provide a narrative of the "major functions" of each organization or the amount of money spent for each such function but would suggest that to a certain extent this information will be reflected in the documents to be produced (financial statements, budgets, and organization charts.)

Interrogatory No. 12—We shall provide a copy of the MEA resolution concerning the assessment of a fair share fee at 100% of regular membership dues. We shall also provide resolutions of the identified organizations concerning fair share if they are in existence. We do not recall agreeing to produce the minutes of all such meetings or staff memoranda concerning fair share fees but rather agreed to consider the identification and production of any such documents.

Interrogatory No. 13—We are again troubled by the scope of this request and the definition of "public affairs" but we will investigate to determine the extent of any such documentation and would suggest that before undertaking to collect and produce it that we further discuss your request on this matter.

Interrogatory No. 14—We are in fundamental agreement with your analysis.

Interrogatory No. 15(a), (b), and (c)—We are in fundamental agreement with your analysis.

Interrogatory No. 16—We shall indicate that all fair share fees received by the MCCFA are being held in an escrow account but we shall not disclose the total amount of such fees for the entire bargaining unit. We were not aware that this interrogatory requested the identification of any such account or bank.

Interrogatory No. 17—See above comments concerning Interrogatory No. 16.

Interrogatory No. 18—We indicated that if readily available we would provide information concerning the total number of employees in the bargaining unit although we continue to assert that any information concerning the entire bargaining unit is irrelevant in view of the identity of the named plaintiffs. We did not agree to produce any of the information requested in sub-parts (b) and (c).

Interrogatory No. 19(a) through (d)—We are in fundamental agreement with your analysis.

Interrogatory No. 19(e)—Our notes indicate that you were to review the necessity of obtaining such information.

Interrogatory No. 19(f)—Our notes indicate that we objected to identifying legal fees paid by the MCCFA as requested.

Interrogatory Nos. 20(a) and (b)—We are in fundamental agreement with your analysis.

Interrogatory Nos. 20(c) and (d)—We are considering answering these interrogatories.

Interrogatory No. 20(e)—We are in fundamental agreement with your analysis.

Interrogatory Nos. 21(a) (1) (A) through 21(a) (1) (H) —We are willing to consider answering this interrogatory once the referenced language problems are resolved.

Interrogatory Nos. 21(a) (2) and (3)—We are willing to consider answering these interrogatories once the above-mentioned language problems are resolved.

Interrogatory Nos. 21(b), (c), and (d)—We have indicated a willingness to answer these interrogatories based upon our tentative understanding that no differentiation of treatment has taken place.

Interrogatory Nos. 22(a) through (i)—Our understanding was that we would inquire as to the feasibility of reviewing the necessary files for this information and advise you appropriately.

Interrogatory No. 22(j)—See comment for the previous portions of Interrogatory No. 22 above.

Interrogatory No. 23—Our objections still stand.

Interrogatory No. 24—Our objections still stand.

Interrogatory No. 25—The collective bargaining contracts will be produced.

Interrogatory No. 26(a), (b) and (c)—We are in fundamental agreement with your analysis.

Interrogatory No. 27—Our objections still stand.

Interrogatory No. 28—We are in fundamental agreement with your analysis.

Interrogatory No. 29—We are in fundamental agreement with your analysis.

Interrogatory No. 30—We have provided an answer.

Interrogatory No. 31—Our objections still stand.

Interrogatory No. 32—We have provided an answer.

Interrogatory No. 33—We are in fundamental agreement with your analysis.

Interrogatory No. 34—We agreed to determine the effort necessary to located any such requested documents as they might pertain to the named plaintiffs.

Interrogatory No. 35—We are in fundamental agreement with your analysis.

Interrogatory No. 36—We are in fundamental agreement with your analysis.

Interrogatory No. 37—We will provide answers.

We hope to provide much of the information relevant to your inquiries concerning many of the interrogatories within the next several weeks, and we also expect to be able to advise you at that time of the date when we will produce the interrogatory answers and documents already agreed upon. We would appreciate hearing from you on the matters you agreed to further review at your earliest convenience.

Depending on the volume of documents involved, document production may have to take place in Washington, D.C. as well as in St. Paul. We shall of course provide you with timely notice of the details associated with any such document productions.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By: ERIC R. MILLER

ERM/gm

EXHIBIT C

September 8, 1976

Mr. William E. Mullin
Mullin, Swirnoff & Weinberg
2200 Dain Tower
Minneapolis, Minnesota 55402
Re: *Leon Knight, et al. v. MCCFA, et al.*
Dear Mr. Mullin:

We are in receipt of your letter of September 7, 1976 with respect to certain aspects of the plaintiffs' requested discovery in this action.

The documents we have produced to date and which we are producing today under separate cover are those which we indicated we could readily produce and permit you to make additional decisions on the balance of your outstanding discovery requests. Whether this initial production can be characterized as involving "substantial numbers of documents" is subject to interpretation but we never attempted to place a volume estimate on the documents involved.

Our understanding was that we would produce (1) constitutions, (2) by-laws, (3) annual budgets, and (4) annual financial statements as the initial production. We have already produced the first two categories and today are producing the latter two groups for the NEA, MEA, MCCFA, and IMPACE. We agreed to and presently are assembling the other documents we agreed to produce and are reviewing the balance of the requests you indicated were of primary concern. We hope to advise you soon as to the disposition of these matters.

We are producing the annual budgets and financial statements today pursuant to the recent protective order in this action. We understand paragraph 4 of the order to be based on the plaintiffs' initial proposal that we designate by way

of descriptive categorization those documents which are public or not subject to the protective order. The clear intent being that all documents not designated as public information by the defendants are claimed confidential and subject to the protective order. Consistent with that understanding the following constitutes our "designations" of public information pursuant to paragraph 4 of the protective order:

National Education Association—a) annual budgets; b) annual financial statements

Minnesota Education Association—a) annual budgets

We shall provide you with a statement for the copying cost of these documents under separate subsequent cover.

We trust the above is responsive and satisfactory in view of our extensive discussions on the matter.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By: ERIC R. MILLER

ERM/gm

EXHIBIT D

Letterhead

LAW OFFICES

MULLIN, WEINBERG & DALY, P.A.

January 26, 1977

Eric R. Miller, Esq.
Oppenheimer, Wolff, Foster,
Shepard and Donnelly
W-1781 First National Bank Bldg.
St. Paul, Minnesota 55101

Re: Knight, et al. vs. MCCFA, et al.
Civil Action No. 4-74-659
Our File Number 2447

Dear Eric:

We have currently reviewed the Board of Directors minutes for MCCFA and IMPACE. I understand that the minutes for MEA will be available shortly. With the exception of the materials discussed on page 2 of this letter, we will accept inspection and copying of the following additional documents in answer to plaintiffs' interrogatories.

1. The written objections and requests for accounting received by MCCFA from the plaintiffs regarding payment of fair share fees referred to in your Answers to Interrogatories, First Set, Interrogatory No. 22.

2. The written reports given orally at the MCCFA board meetings concerning legislative matters referred to in Defendant MCCFA's Answers to Interrogatories, Second Set, Nos. 3 and 4(b), insofar as such reports are not included in full in the actual minutes of the MCCFA board meetings or executive meetings.

3. The files maintained at the MCCFA offices on workshops or training programs referred to in MCCFA's An-

swers to Interogatories, Second Set, Interrogatory Nos. 1(a) and (b).

4. The notebooks containing materials relating to 1974-1976 political action workshops maintained at the MEA offices, referred to in MEA's Answers to Interrogatories, Second Set, Nos. 7(c) and 8(b).

5. Copies of actual and proposed bills prepared for MEA, NEA, IMPACE and MCCFA by peronnel of these organizations or attorneys for these organizations, for or proposed for introduction in either the Minnesota legislature or the United States Congress, during the period from January 1, 1971 through the present.

6. Copies of any press releases issued by MEA, MCCFA, NEA or IMPACE during the period from January 1, 1972 to the present.

7. Except for material previously supplied, copies of all publications sent since January 1, 1971 by NEA, MEA, MCCFA, and IMPACE to their respective members or their officers or offices of their affiliates, including, but not limited to, *NEA Reporter, NEA Advocate, NEA NOW, MEA Advocate, Today's Education, Window on Legislation, VIP Governmental Relations-Briefing Memo, Window on the Legislature,* MCCFA *Green Sheet,* MCCFA *News Flashes.* (With respect to these items, we would like to be put on the mailing list for all publications for the duration of this litigation.)

8. Minutes of the NEA Board of Directors and Executive Committee, and delegate assembly meetings from January 1, 1972 to the present, referred to in NEA's Answers to Interrogatories, First Set, 2(a) and (b). We would be glad to inspect these minutes in the NEA offices in Washington.

9. The records of requests from employees in the MCCFA bargaining unit for information on expenditures referred to

in NEA's Answers to Plaintiffs' Interrogatories, First Set, No. 20.

10. "Speaking for Teachers" training materials, including the section on lobbying, referred to in NEA's Answers to Plaintiffs' Interrogatories, Second Set, Nos. 7 and 8.

11. All files of MEA, NEA, MCCFA and IMPACE relating to legislation and legislative affairs in the Minnesota legislature or the Congress of the United States, including, but not limited to, correspondence with members of Congress and members of the Minnesota legislature.

12. Copies of all materials mailed out to member officers of the MEA, MCCFA, NEA or IMPACE concerning legislation and legislative affairs (except those publications covered by paragraph 7 above).

13. Minutes of the respective Boards of Directors and delegate assemblies of MEA, MCCFA, and IMPACE, referred to in MEA's and MCCFA's respective Answers to Interrogatories, First Set, 2(a) and (b).

As for financial information which you left for consultation by the parties—see your Answers to Interrogatories, Second Set, No. 11, I will accept for the present your producing for deposition the person or persons who would know most about apportionment of "fair share" fees paid to MCCFA, and the person or persons who would know most about payments by MCCFA to the other defendants.

By accepting the above documents in answer to Plaintiffs' Interrogatories, we do not waive the discovery of other materials which may be discoverable under Rule 34, Federal Rules of Civil Procedure.

Very truly yours,
William E. Mullin

WEM:ska
cc: Dr. Edwin Vieira

EXHIBIT E

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY

February 3, 1977

Mr. William Mullin
Mullin, Swirnoff & Weinberg
2200 Dain Tower
Minneapolis, Minnesota 55402

Re: Leon Knight, et al. v. MCCFA, et al.

Dear Mr. Mullin:

Attached you will find copies of the MEA Board of Directors' Meeting Minutes for the period July, 1971, to the present. These documents are provided to you pursuant to your request. Following is an enumeration by board meeting date and general subject matter of those portions of the minutes and attachments to the minutes which have been deleted on the basis of irrelevancy or for which a claim of privilege is made.

August 20, 1971—List of MEA members suspended or terminated for delinquent dues (4-page attachment).

November 5-6, 1971—Report of NEA Board of Directors, October 22-24, 1971. (9-page attachment)

May 5-6, 1972—Report of the NEA Directors, May 5, 1972. (6-page attachment)

August 25-26, 1972—Memorandum from Director of membership to the MEA Board of Directors dated August 15, 1972, listing members suspended from membership for non-payment of dues. (12-page attachment)

May 4-5, 1973—Proposed agreement between the inter-faculty organization for Minnesota State Colleges and the Minnesota Education Association and the National Society of Professors of the National Education Association, May, 1973, (6-page attachment)

August 2-3, 1973—Motion made and passed listing names of members whose termination was recommended for delinquent dues (page 8, XXXV)

October 5-6, 1973—Agreement between the School Nurse Organization of Minnesota and the Minnesota Education Association, October 6, 1973 (3-page attachment)

October 5-6, 1973—Report of NEA directors of NEA Board of Directors' Meeting of September 13-16, 1973. (4-page attachment)

October 19, 1973—Motion relating to dispute of MEA with Dr. Glaydon Robbins. (page 3, XIV, paragraph 1)

December 7-8, 1973—Proposed agreement between the Minnesota Association of Paraprofessionals and the Minnesota Education Association, October 12, 1973. (3-page attachment)

December 7-8, 1973—Actions of the NEA Board of Directors, November 16-18, 1973. (6-page attachment)

December 7-8, 1973—Proposed agreement between the University of Minnesota Duluth Faculty Association and the Minnesota Education Association and the National Education Association (5-page attachment)

December 7-8, 1973—Declaration of trusts relating to Economic Services, Inc. (18-page attachment)

February 1-2, 1974—Motion relating to MEA dispute with Dr. G. Robbins. (page 3, XII)

March 27-28, 1974—Report of MEA Board Merger Study Committee, March 27, 1974. (14-page attachment)

June 7-8, 1974—Information report regarding selection of an arbitrator and associated expenses. (page 8, XXIX)

June 7-8, 1974—Listing of billings of individual MEA members (2-page attachment)

August 6-7, 1974—Report of the June meeting of the NEA Board of Directors (2-page attachment)

October 4-5, 1974—Report of the NEA Board of Directors meeting: September 20-21, 1974 (2-page attachment)

December 13-14, 1974—Report of the November meeting of the NEA Board of Directors (2-page attachment)

February 7-8, 1975—Report of the NEA Midwest Regional Advisory Council held January 24-25, 1975. (2-page attachment)

June 6-8, 1975—NEA Board of Directors report for the meeting of May 2-4, 1975. (4-page attachment)

June 6-8, 1975—Midwest Regional Advisory Council report, May 30-31, 1975 (11-page attachment)

August 8-9, 1975—NEA Board of Directors report, June 30-July 2, 5, 1975. (3-page attachment)

August 8-9, 1975—State membership project proposal relating to the student Minnesota Education Association. (6-page attachment)

October 3-4, 1975—Report of NEA Board meeting, September 18-21, 1975. (4-page attachment)

October 3-4, 1975—Midwest Region meeting report (2-page attachment)

October 3-4, 1975—Agreement between Mid-Minnesota Uni-Serv/MEA/NEA and the Pierz Federation of Teachers.

October 3-4, 1975—Agreement between Mid-Minnesota Uni-Serv/MEA/NEA and the Pillager Federation of Teachers.

December 5-6, 1975—Substitute pay for members policy from other states. (1-page attachment)

December 5-6, 1975—Minnesota Vocational Educator's Assoc. Constitution, proposal December 1975. (6-page attachment)

February 6-7, 1976—National Education Association Board Meeting, December 12-14, 1975. (3-page attachment)

February 6-7, 1976—Memorandum report of NEA directors regarding NEA Council of Great Lake states, January 30-31, 1976. (2-page attachment)

April 8, 1976—Agreement between the Minnesota Education Association of Vocational Educators and the MEA. (4-page attachment)

April 8, 1976—Report of NEA Board meeting, February 13-14, 1976. (2-page attachment)

June 11-13, 1976—Report of NEA Board meeting, April 3, May 1-2, 1976. (5-page attachment)

June 11-13, 1976—Legal opinion letter of attorney, John Wolf, Oppenheimer Lawfirm, to A. L. Gallop, Executive Director of the MEA re: MEA staff services: Organization.

June 11-13, 1976—Memorandum from MEA attorney, Gary Green, to A. L. Gallop, June 8, 1976 re: review of John Wolf's opinion letter dated June 7, 1976. (2-page attachment)

December 13-14, 1974—Organizational Agreement of the Minnesota Coalition of American Public Employees (2-page attachment)

June 11-13, 1976—Draft of a provision on retention of local negotiators by the Future Goals Committee of the State Council for Negotiations (11-page attachment)

September 10-12, 1976—MEA Board of Directors' meeting minutes, pp. 7-8, XXV, paragraph 2.

September 10-12, 1976—Report of NEA Board of Directors' Meeting, June 23-25, 1976. (4-page attachment)

September 10-12, 1976—IMPACE annual report of IMPACE annual meeting, April 3, 1976 (7-page attachment)

November 5-6, 1976—Report of NEA Board of Directors' Meeting, October 1-3, 1976 and Great Lakes regional meeting, September 24-25, 1976. (3-page attachment)

January 14-15, 1977—Report of NEA Board of Directors' Meeting, December 17-18, 1976. (4-page attachment)

January 14-15, 1977—Agreement between the Inter-Faculty Organization of the Minnesota State University and the Minnesota Education Association and the National Education Association, June 15, 1976 (5-page attachment)

The total cost of copying at 10 cents per page is $40.00. Please reference the Knight matter when remitting payment.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By: SUSAN M. KUZIAK
Legal Assistant

cc: Edwin Vieira
SMK:ds
Enc.

EXHIBIT F

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY

February 10, 1977

William E. Mullin
Mullin, Weinberg & Daly, P.A.
2200 Dain Tower
Minneapolis, Minnesota 55402

Re: *Knight et al. vs. MCCFA, et al.*

Dear Bill:

Eric Miller and I have reviewed the requests for documents made in your letter of January 26, 1977. I want to express our concern with the fact that your requests are very expansive,

going beyond documents called for in revised Interrogatories to Defendant Unions, Sets I and II and beyond documents identified in Answers to those Interrogatories. Further, I am concerned, in light of the schedule of noticed depositions, with the limited amount of time available within which we can respond to your requests and prepare documents for production. Should additional documents be requested in the future, I suggest that the request be made formally pursuant to Rule 34, FRCP.

Following is our response to your requests. The responses correspond to the numbered paragraphs in your January 26 correspondence:

1. Consented to.

2. Consented to to the extent that such written reports exist which were not previously provided in conjunction with production of MCCFA Board of Directors meeting minutes.

3. Consented to.

4. Consented to.

5. Objected to on the basis that the request goes to information and materials beyond that called for in Interrogatories as revised in our Rule 5 correspondence and identified in Defendants' Answers. Further objection is made with regard to any and all documents not specifically related to the State of Minnesota.

6. Objection is made on the basis that the request is burdensome, overly broad and irrelevant and goes beyond the scope of materials identified in Rule 5 correspondence. Should you wish to identify press releases of a specific subject matter relevant to the issues raised in this litigation, we will be happy to reconsider such a request.

7. Consented to for the time period July 1, 1971 to the present with respect to specifically identified publications to

the extent that the documents have been retained by Defendants, MCCFA, MEA and NEA. Defendants are unable to produce any documents under the term "all publications," without further explanation and identification by Plaintiffs.

8. Consented to.

9. Consented to with respect to requests from Plaintiffs only to the extent such documents exist.

10. Consented to.

11. See the response contained in paragraph 5 above. Further objection is made with respect to the vagueness of the terms "legislation and legislative affairs" which are neither defined nor explained by Plaintiff.

12. See the responses to paragraphs 5 and 11 above.

13. Consented to. IMPACE has no Delegate Assembly. Minutes of IMPACE Annual Meetings will be provided.

The documents requested in paragraphs 1, 2, 3, 4, 10 and 13 of your January 26, 1977 letter will be available for your review in our St. Paul office on Monday, February 14 at and after 12:00 p.m. If you wish to have us provide copies of these documents, as was done with MEA Board of Directors minutes, additional time will be required. Please advise me of how you wish to handle the document review.

The specifically identified publications of the MCCFA and MEA requested in paragraph 7 will also be available for your review in our offices after 12:00 p.m. on Monday, February 14th.

With respect to the specifically identified publications of the NEA and the NEA documents requested in paragraphs 8 and 9, we will contact our client to determine the availability and volume of these materials. We will advise you at the earliest possible date when the documents will be available for review and whether this will be done in Washington, D.C. or

in our St. Paul offices. The financial information you refer to in the last paragraph of page 2 of your letter can be ascertained during the depositions of Mr. Chesebrough and Mr. Gallop.

It is my understanding in talking with Eric, that the deposition of Ralph Chesebrough has been rescheduled for Wednesday, February 16th, and the deposition of Mr. Gallop for Friday, February 18th. Mr. Gallop will not be available on the 18th. In an effort to maintain the schedule, we have contacted Cal Minke and arranged for his appearance on the 18th. As Mr. Minke must travel to the Twin Cities from Willmar, we ask that his deposition begin at 10:30 a.m. rather than at 9:00 a.m. We have tentatively rescheduled Mr. Gallop for Tuesday, February 22nd, as the 21st is a holiday. Please advise Susan Kuziak of our office, if the above arrangements are agreeable to you. We intend that the remaining depositions be taken as scheduled and are now in the process of contacting these individuals to confirm their availability.

In conjunction with the noticing of depositions and pursuant to Rule 34, you have requested certain additional documents. We respond to these requests as follows:

1. We have no objection to the production of expense accounts to the extent that they exist.

2. Objection is made to production of "daily files", "correspondence files", or other files on the basis that the request is burdensome, and so overly broad as to encompass materials which are irrelevant and not calculated to lead to the discovery of relevant information.

3. We are currently unaware of any activity reports beyond those contained within or attached to Board of Directors minutes previously provided. We are contacting each indi-

vidual scheduled for deposition in an effort to determine if additional activity reports do exist.

We are unable to guarantee providing the expense reports of Mssrs. Chesebrough and Minke four days in advance of their depositions. We will attempt to meet this time commitment with respect to other individuals to be deposed.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By KEITH E. GOODWIN

KEG:ds

EXHIBIT G

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY
Attorneys at Law

March 1, 1977

William E. Mullin
Mullin, Weinberg & Daly, P.A.
2200 Dain Tower
Minneapolis, Minnesota 55402
Re: Knight, et al. vs. MCCFA, et al.
Dear Bill:

MEA Delegate Assembly minutes for the years 1976 through 1972 have now been made available for review in response to the request contained in ¶13 of your letter of January 26, 1977. The following is an identification, by date, page and general subject matter, of those portions of the minutes deleted pursuant to a claim of attorney-client privilege:

1973

VOLUME II: pp. 137, 151-152, 154, 155, 156, 200, 206, 211-212, 214, 217-218, 219, 223, 232-233 — Opinions of attorney, John Wolf re: Legality of newly proposed MEA By-Laws.

VOLUME III: pp. 261-262-263 — Opinion of attorney, John Wolf, re: Legality of special assessment of members.

VOLUME III: p. 410 — Report of legal advice re: establishment of Economic Service Corporation.

1974

VOLUME I: pp. 56-58 — Report of attorney, Craig Gagnon, re: MEA legal matter; St. Louis Park teacher terminations.

VOLUME I: pp. 147-148 — Advice of attorney, John Wolf, re: Bureau of Mediation Services rulings.

VOLUME I: pp. 201-202 — Advice of attorney, John Wolf, re: Fair share fees.

VOLUME II: p. 208 — Advice of attorney, John Wolf, re: Bureau of Mediation Services.

VOLUME II: pp. 350-351 — Opinion of attorney, John Wolf, re: Proposed MEA By-Law Amendment.

VOLUME II: p. 376, 377-79 — Discussion of attorney, John Wolf, with delegates re: new business item concerning Master Contract language.

A summary of all documents produced pursuant to your January 26 correspondence as well as confirmation of the dates for rescheduled depositions will be provided under separate cover.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By SUSAN M. KUZIAK
Legal Assistant

SMK:ds
cc: Edwin Vieira

EXHIBIT H

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY
Attorneys at Law

March 1, 1977

William E. Mullin
Mullin, Weinberg & Daly, P.A.
2200 Dain Tower
Minneapolis, Minnesota 55402

Re: *Knight, et al. vs. MCCFA, et al.*

Dear Bill:

The purpose of this letter is to summarize those materials provided to you pursuant to the requests contained in your letter of January 26, 1977 and in your Request for Production of Documents served in conjunction with Notices of Deposition. The following documents (for the period July, 1971 to the present) have been produced to date:

MCCFA:

Board of Directors Meeting Minutes

Written reports given at MCCFA Board meetings regarding legislative matters

MCCFA Delegate Assembly Minutes

Written objections and requests for accounting received by MCCFA from Plaintiffs regarding payment of fair share fees

MCCFA materials relating to workshops or training programs (as identified in MCCFA Answers to Interrogatories, Second Set, Nos. 7 & 8)

MCCFA *Green Sheets* and MCCFA *News Flashes*

Expense reports of MCCFA Executive Director, Ralph S. Chesebrough and MCCFA President, James Durham

IMPACE:

Board of Directors Meeting Minutes

Annual Meeting Minutes

Expense reports of IMPACE Treasurer, John Schutt

MEA:

Board of Directors Meeting Minutes

MEA Delegate Assembly Meeting Minutes

MEA *Advocate, Window on Legislation, VIP, Briefing Memo,* and *Window on the Legislation*

MEA Political Action Workshop materials (1974, 1975, 1976)

Expense reports of MEA Executive Director, A. L. Gallop, MEA President, Donald Hill, MEA Treasurer, Alfred Provo.

NEA:

"Speaking for Teachers" training materials (as identified in NEA Answers to Interrogatories, Second Set, Nos. 7 & 8)

In addition to the above-listed documents, the NEA, MEA, MCCFA and IMPACE Constitutions, By-Laws and Articles of Incorporation; budgets and financial statements; and various documents attached to Interrogatory Answers were provided to Plaintiffs prior to January 26, 1977.

Documents which you requested and which we have agreed to provide that have not as yet been provided are:

—NEA Board of Directors, Executive Committee and Representative Assembly meeting minutes

—*NEA Reporter, NEA Advocate, NEA NOW* and *Today's Education*

—Requests from Plaintiffs to the NEA regarding information on expenditures, if any, (as identified in NEA Answers to Interrogatories, First Set, No. 20)

—Expense accounts of NEA Executive Secretary, Terry Herndon, NEA President, John Ryor and the NEA Treasurer.

These documents will be produced at NEA headquarters in Washington, D.C. I will advise you when they will be available for review.

I have a copy of that portion of Ralph Chesebrough's deposition transcript in which you requested additional MCCFA documents. As soon as the available identified materials have been collected, they will be provided to you,

The rescheduled dates for upcoming depositions are as follows:

March 4—Calvin Minke (10:30 a.m.)
March 7—James Durham
March 9 & 11—Donald Hill
March 15 & 16—Fulton Klinkerfues
March 17—Chancellor Helland
March 18—John Schutt

The deposition of Alfred Provo has been temporarily cancelled. Mr. Provo will not be available again until the last week in March. I am attempting to schedule the deposition of Mssrs. Ryor and Herndon for the week of April 11, 1977, but as yet have not received conformation from the NEA of their availability during that time period. Please let me know if the above dates conflict with your understanding of the revised schedule.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By: SUSAN M. KUZIAK
Legal Assistant

cc: Edwin Vieira
Donald Mueting
Stephen Befort

EXHIBIT I

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY

June 27, 1978

Mr. Edwin Vieira, Jr.
National Right to Work
Legal Defense Foundation, Inc.
8316 Arlington Blvd., Suite 600
Fairfax, Virginia 22030
Mr. William E. Mullin
Mullin, Weinberg & Daly, P.A.
2200 Dain Tower
Minneapolis, Minnesota 55402
Re: *Leon Knight, et al. vs. MCCFA, et al.*
Gentlemen:

Attached to this letter you will find a listing, alphabetically by subject matter, of the files maintained in Mr. Gallop's office for the year 1977-78. This list was prepared in our office as no file index is kept by Mr. Gallop or his secretary. Bill, I am providing this list as a result of our phone conversation yesterday. I indicated that with regard to 'correspondence' files both the document requests and the deposition testimony in which the files were identified are very vague. It is difficult, therefore, to determine what falls within the scope of the Request, i.e., what kind of documentation you are seeking.

The subject listing is provided for your review. If it proves helpful to you in more clearly defining what documents you are requesting, I will prepare similar lists for Mr. Gallop's previous years' files. If you're unable to be more specific on the basis of subject matter, perhaps you can provide additional definition as to the types of documents sought.

The same problem of vagueness we face with respect to Mr. Gallop's correspondence files is being encountered with the files of those NEA people scheduled for deposition. In the interest of facilitating the remaining discovery, I would hope any clarification with regard to the Gallop files would be applicable to the NEA correspondence files.

I am suspending my work on collection and preparation of correspondence files pending a response from you. We are anxious to comply with all appropriate document requests. We would like to do this, though, in the most efficient and least costly manner. I anticipate hearing from you within the next few days.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By: SUSAN M. KUZIAK
Legal Assistant

SMK:ds
Enclo.

P.S. Dr. Vieira, this letter is a result of a phone discussion with Bill on 6/26/78. He asked that I add a note requesting that you call him re: the above—so here it is.

A—General
Arbitration Position
Applicants
Attorney—other
Attorney—Mr. Green
Affirmative Action
Applicants for GR
Application Forms—Affirmative Action Forms—Etc.
Applicants for Arbitration

Applicants for NEG
Applicants for IPD
Affirmative Action—Northeast Range
Capital Affirmative Action Forms
Affiliates
Associates
B—General
Board Committees
Master Contract Committee
Personnel
Crisis Fund Committee
Evaluation Committee
Restructure Committee
Special Board Committee
Manual for Officers—Etc.
C—General
Car Leasing
Staff Liaisons to Councils
Council Coordinating Committee
Communications
Field Services
Economic Services
IPD
Negotiations
GRC
PR and R
Resolutions
Credit Union—MEA
D—General
E—General
Education Associations (states)
1978 MEA Elections

F—General
Fair Share
G—General
Governor Perpich
H—General
Hennepin UniServ Units Contracts
I—General
IMPACE
J—General
K—General
L—General
Legislation
Legislators—Minn.
Leaders Digest
Mc—General
M—General
Minority Intern Program
MEA Conventions
MASA
MSAE
Minn. State University Assoc. of ADM. and Service Faculty
N—General
NEA—St. Louis Group
Radisson on National Education Association R. A.
NEA Directors
O—General
Officers
—Mr. Hill
—Ms. Zens
—Mr. Provo
P—General
R—General

1979 Rep. Assembly
1979 R. A.
S—General
Staff Job Descriptions
Staff
Cabinet Staff (Exec. Staff)
Exec. Staff Contracts
Executive Staff Vacation, Sick Leave, Personal Leave
Mr. Palmer
Mr. Brunell
Mr. Churchill
Mr. Moriarity
Mr. Pratt
Mr. Thiemich
Mr. Lentz
TSA
Executive Directors' Contract
SSA
TSA Contracts
PSA
Staff Contracts
Staff Retirement
Staff Vacation
Staff Seniority List
Staff Fringes
Strikes
Speeches and Articles
St. Dept. of Educ.
T—General
Treasurer's Position
U—General
Unfair Labor Practices

Union
UniServ Chairpersons
U.S. Congressmen
V—General
W—General
Work Orders
XYZ—General
UniServ Staff
State Staff
NEA

EXHIBIT J

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY

July 10, 1978

William Mullin
Mullin, Weinberg & Daly
2200 Dain Tower
Minneapolis, Minnesota 55402
Edwin Vieira
National Right to Work
Legal Defense Foundation, Inc.
8316 Arlington Blvd., Suite 600
Fairfax, Virginia, 22030
Re: Leon Knight, et al. vs. MCCFA, et al.
Gentlemen:

Enclosed and served upon you please find Defendant, NEA's Response to Plaintiffs' Request for Production. Also enclosed is Defendants' MCCFA, MEA, IMPACE and NEA, Response to Plaintiffs' additional Document Request.

All correspondence files to be produced will be responsive to the Requests as verbally amended and clarified by Dr. Vieira,

through Mr. Mullin's office, on Friday, June 30, 1978. Such files will include the following: letters, written correspondence, memoranda to the file, internal and external memoranda, press releases (released under the individual's name), telegrams, written records of phone conversations and written records of discussions.

Bill, it's my understanding per your discussion with Susan Kuziak of our office that you expect production of an individuals' correspondence files one week in advance of his/her deposition. We will meet this commitment to ensure timely progression of the agreed upon deposition schedule.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By: ERIC R. MILLER

SMK:ds

EXHIBIT K

Letterhead

MULLIN, WEINBERG & DALY, P.A.

November 7, 1978

Eric R. Miller, Esq. and
Keith E. Goodwin, Esq.
Oppenheimer, Wolff, Foster,
Shepard and Donnelly
W-1700 First National Bank Building
St. Paul, Minnesota 55101

Re: Leon Knight, et al., vs. MCCFA, et al.
Our File Number 2447

Gentlemen:

This is to confirm our agreement reached at our Rule 5 meeting of Monday, November 6th, concerning document pro-

duction to be made in lieu of the documents requested in the notices of depositions of the persons named below.

1) The following documents will be produced in advance of Sue Zagrabelny's deposition:

a) All documents which exist in any MEA, IMPACE or MCCFA file under a designation referring to the "1340 Club/ Committee";

b) All documents of MEA, IMPACE or MCCFA in files designated as relating to Sue Zagrabelny which relate to the MEA "1340 Club/Committee", IMPACE, or to the campaign of any candidate for election to public office who has received aid of any kind in regard to his/her campaign from MCCFA, MEA, NEA, UniServ, their officials, staff-personnel, or members, or any departments, counsels, committees, or other subdivision thereof.

c) All files in Sue Zagrabelny's possession which relate to the MEA "1340 Club/Committee", IMPACE, or to the campaign of any candidate for election to public office who has received aid of any kind in regard to his/her campaign from MCCFA, MEA, NEA, UniServ, their officials, staff-personnel, or members, or any departments, counsels, committees, or other subdivision thereof.

2) Regarding the deposition of Ken Bresin, there will be produced all correspondence specifically filed or designated as his correspondence. It is understood that this will involve only current materials, as no specifically-designated files are kept for him or by him.

3) Regarding the deposition of R. Dick Vander Woude, there will be produced all correspondence specifically filed or designated as his correspondence.

4) The following documents will be produced in advance of the deposition of Ken Pratt:

a) All MEA news or press releases, located in files of the MEA where they are specifically designated as such;

b) All public relations materials used at workshops or other training sessions, specifically kept together or retained by MEA in a separate file;

c) MEA files of resource material and documents relating to the preparation of the *MEAdvocate*, including files of the IPD and other counsels, but excluding galleys, proofs or photographs;

d) All correspondence specifically filed or designated as his correspondence.

5) The following documents will be produced in regard to the Susan Lowell deposition:

a) All NEA news or press releases, located in files specifically referring to news or press releases;

b) All speeches or addresses prepared for delivery by NEA officials or staff-personal filed with the NEA in a file designated as such;

c) All NEA advertisements files with the NEA under designations referring to NEA advertisements;

d) All public relations materials for workshops or other training sessions which are kept or filed together in a file designated as such;

e) All correspondence specifically filed or designated as her correspondence;

f) Any files of resource material or documents relating to the preparation of NEA publications, excluding galleys, proofs or photographs.

6) Regarding production of documents for the deposition of James A. Harris, you have advised that you will shortly provide the documents from the NEA executive files which you

previously agreed to produce. You advise that these materials will contain some documents referring to Mr. Harris. We will accept this in satisfaction of your obligation to produce documents for the Harris deposition.

7) The following documents will be produced for the Robert Harman deposition:

a) All documents which relate to duties, tasks and expectations of performance of duties of governmental relations consultants and political education consultants;

b) All documents relating to the activities of the NEA with respect to state or local referenda on the subject of "tax limitations, voucher plans, and government aid to private schools" which have been complied by the NEA in the recently-undertaken collection of information;

c) The "thick document", a special message from the Detroit meeting, on the condition that it can be located;

d) All correspondence specifically filed or designated as his correspondence.

We anticipate production of these documents as soon as possible, and in any event in advance of the deposition of the person to be examined on them.

Yours very truly,
WILLIAM E. MULLIN

WEM/dp
cc: Dr. Edwin Vieira, Jr.
Donald J. Mueting, Esq.

EXHIBIT L

Letterhead

OPPENHEIMER, WOLFF, FOSTER,
SHEPARD AND DONNELLY

November 10, 1978

Dr. Edwin Vieira, Jr.
National Right to Work Legal
Defense Foundation, Inc.
8316 Arlington Blvd.
Suite 600
Fairfax, Virginia 22038

Re: Knight vs. MCCFA

Dear Edwin:

I want to confirm our discussions this week concerning your most recently requested discovery. Bill Mullin's letter of November 7 is accurate concerning the paragraphs numbered 1, 2, 3, 4 and 6.

With respect to paragraph 5 of Bill's letter (the documents requested in conjunction with the Susan Lowell deposition), we have agreed to produce the central files within the communications department responsive to sub-paragraphs (a) through (f). I indicated that there would be very few documents responsive to sub-paragraphs (b) and (c).

In conjunction with paragraph 7 of Bill's letter (the documents requested in conjunction with the Robert Harman deposition) the only documents to be produced in response to sub-paragraph (a) are the expectation reports for Mr. Felix during the time he was responsible for the State of Minnesota and for Mr. Vander Woude during the time he has been responsible for the State of Minnesota. We have agreed to produce the documents responsive to the balance of the sub-paragraphs in paragraph 7.

The deposition scnedule as of this moment is as follows:

November 16—Ken Bresin

November 17—Sue Zagrabelny

November 20—Richard Vander Woude

November 21—Ken Pratt

November 28—Robert Harman

It is anticipated that we will attempt to conduct the depositions of James Harris and Susan Lowell during the week of December 4 dependent upon our ability to produce the necessary documents in advance of that week. I indicated that we would try to produce any documents pertaining to the Bresin and Zagrabelny depositions on or before November 14 and the documents pertaining to the Vander Woude and Pratt depositions on or before November 17. We will also try to produce the documents for the Harman deposition during the week of November 20.

Very truly yours,
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By ERIC R. MILLER

ERM:jr
cc: William Mullin
Don Mueting
Steve Befort
Faith Hanna

EXHIBIT M

February 1, 1978

The Honorable Donald D. Alsop
United States District Court Judge
United States District Court,
District of Minnesota
110 South Fourth Street
Minneapolis, Minnesota 55401

Re: Leon Knight, et al., vs. MCCFA, et al.
Court File Number 4-74 Civ. 659
Our File Number 2447

Dear Judge Alsop:

Pursuant to Your Honor's letter of January 11, 1978, we are reporting to you on the preparation status of the case.

Interrogatories have been exchanged and answers or objections have been served. Twelve depositions have been conducted to date.

The major thrust of present efforts in the case centers on Plaintiffs' Requests for Admissions and accompanying Interrogatories. Six extensive meetings have been conducted to date concerning various objections and problems associated with the requests and Interrogatories. It is expected that several more meetings will be necessary to determine the extent of any remaining problems. It is contemplated the parties will have to request the Court for one additional extension of time beyond February 15 in order to complete the present review.

We are hopeful that most discovery problems can be resolved soon. The issue of whether or not a narrative stipulation of facts can or should be prepared is under consideration. The resolution of these questions will determine whether additional discovery is needed.

Both sides are committed to working on these questions, and resolving them as soon as possible. We will report to the Court on March 31, 1978, and hope that at that time we can present Your Honor with an estimate as to the date the case will be ready for submission.

Yours very truly,
MULLIN, WEINBERG
& DALY, P.A.
By WILLIAM E. MULLIN
OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By ERIC R. MILLER
DONALD J. MUETING
Special Assistant
Attorney General
STEPHEN F. BEFORT
Special Assistant
Attorney General

AFFIDAVIT OF SERVICE

State of Minnesota
County of Ramsey—ss.

LOIS J. FASCHING, being first duly sworn, deposes and says that on January 26, 1979, she served the attached Defendants' Memorandum in Opposition to Plaintiffs' Motion to Reopen Discovery and Affidavit of Eric R. Miller upon:

Mr. William Mullin
MULLIN, WEINBERG & DALY, P.A.
Dain Tower
527 Marquette
Minneapolis, MN 55402

Edwin Vieira
National Right to Work Legal
Foundation, Inc.
Suite 600
8316 Arlington Blvd.
Fairfax, Virginia 22030

by placing true and correct copies thereof in envelopes addressed as above stated (which are the last known addresses of said attorneys) and depositing the same, with postage prepaid, in the United States mails at St. Paul, Minnesota.

LOIS J. FASCHING

Subscribed and sworn to before me this 29th day of January, 1979, Mariann Macalus, Notary Public, Ramsey County, Minnesota. My Commission Expires July 30, 1985.

AFFIDAVIT OF SERVICE

State of Minnesota
County of Ramsey—ss.

LOIS J. FASCHING, being first duly sworn, deposes and says that on January 29, 1979, she served the attached Defendants' Memorandum in Opposition to Plaintiffs' Motion to Reopen Discovery and Affidavit of Eric R. Miller upon:

Mr. Stephen Befort
Special Assistant Attorney General
303 Capitol Building
550 Cedar Avenue
St. Paul, Minnesota 55155
Mr. Donald J. Mueting
Special Assistant Attorney General
303 Capitol Building
550 Cedar Avenue
St. Paul, Minnesota 55155

by placing true and correct copies thereof in envelopes addressed as above stated (which are the last known addresses of said attorneys) and depositing the same, with postage prepaid, in the United States mails at St. Paul, Minnesota.

LOIS J. FASCHING

Subscribed and sworn to before me this 29th day of January, 1979. Mariann Macalus, Notary Public, Ramsey County, Minnesota. My Commission Expires July 30, 1985.

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
Civ. No. 4-74-659

STATEMENT OF DEFENDANT
LABOR ORGANIZATIONS

LEON KNIGHT, et al.,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE
FACULTY ASSOCIATION, et al.,

Defendants.

INTRODUCTION

This statement is submitted in response to Plaintiffs' Memorandum Explaining the Interrelationship Among Further Discovery, Stipulations, and Trial.

STATEMENT

Plaintiffs take the position that if Defendants will not stipulate that Defendant labor organizations are a "special interest

political party," there must be a trial. Plaintiffs' position in this regard is typical of their approach to stipulations and Rule 36 Requests for Admission throughout this litigation. Unsatisfied with admissions as to factual data, Plaintiffs persist in demanding that the ultimate conclusions believed necessary to their constitutional arguments be admitted as well. From their ideological perspective, Plaintiffs may well believe it to be a 'fact' that Defendant labor organizations are a political party. Defendants believe this a matter to be determined by the court.

Defendants are willing to stipulate and have in the past admitted to underlying factual data deemed relevant by Plaintiffs to resolution of the question. Further discovery is unwarranted: Plaintiffs have had more than ample opportunity to discover factual data through a variety of means, and the conclusory, ideologically-tinted admissions sought by Plaintiffs would not be prompted by anything forthcoming in the additional proceedings. Plaintiffs have not been thwarted by any "conspiracy" of the Defendants to "Stonewall"—the late date at which Plaintiffs make this motion, it inconsistency with prior statements to the court, and the massive amount of discovery enjoyed indicate as much. Plaintiffs are thwarted only by their unwillingness to accept less than a stipulation to their legal conclusions.

CONCLUSION

Plaintiffs' motion should be denied.

OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By ERIC R. MILLER
KEITH E. GOODWIN

DONALD W. SELZER, JR.
1700 First National
Bank Building
Saint Paul, Minnesota 55101
(612) 227-7271
Attorneys for Defendants
National Education
Association, its affiliates
and its officials and staff
personnel

Dated: March 19, 1979.

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
Civ. No. 4-74-659

LEON W. KNIGHT, et al., Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al.,

Defendants,

DEFENDANT LABOR ORGANIZATIONS' STATEMENT IN OPPOSITION TO PLAINTIFFS' MOTION FOR DISSOLUTION, STAY, RECONSIDERATION AND HEARING

Defendant Employee Organizations continue to oppose the prolonged attempts of Plaintiffs to avoid the discovery deadline in this case. The Court imposed this deadline at the sug-

gestion of Plaintiffs' counsel during a pre-trial conference on October 13, 1978. It was only on the eve of the deadline that Plaintiffs' counsel apparently had a change of heart and began a substantial effort at prolonging discovery. Discovery in this case has been exhaustive. Under these circumstances, the limitations on discovery ordered by the Court are well within its discretion.

Plaintiffs' allegations of "conspiracy" and "cover-up" have been argued at length to the Court in Plaintiffs' various memoranda. These assertions are not credible. Certainly the fact that Plaintiffs' counsel devoted great energy to attempting to substantiate their belief in some type of "conspiracy" against them is not an excuse for failing to pursue discovery on the merits. Finally, the record reflects that Plaintiffs' counsel did not fail in this regard; extensive discovery has been conducted. This fact alone makes Plaintiffs' reference to *Dennis v. United States*, 384 U.S. 855 (1966), erroneous. Plaintiffs' motion for dissolution should be denied.

Plaintiffs enjoy no right under the Federal Rules of Civil Procedure to oral argument on its discovery motion. It is difficult to imagine, given the length of the written argument already presented, that Plaintiffs need any additional opportunity to outline their contentions. Plaintiffs' motion for oral argument should be denied.

Finally, Plaintiffs' request for a stay pending appeal should be rejected. Plaintiffs' suggestion that the Court's ruling on a discovery matter is reviewable flies in the face of the accepted rule that discovery ruling of this kind are reviewable only on appeal of the case as a whole. *United States Alkali Export Ass'n. Inc. v. United States*, 325 U.S. 196 (1945), which concerned a conflict between a district court order and the func-

tioning of a federal agency, is irrelevant to these proceedings, except insofar as it states:

> The writs may not be used as a substitute for an authorized appeal; and where, as here, the statutory scheme permits appellate review of interlocutory orders only on appeal from the final judgment, review by certiorari or other extraordinary writ is not permissible in the face of the plain indication of the legislative purpose to avoid piecemeal reviews.

325 U.S. at 203. Plaintiffs ought not be permitted to unreasonable delay the trial of this matter by making such a frivolous appeal. The request for stay should be denied.

OPPENHEIMER, WOLFF,
FOSTER, SHEPARD
AND DONNELLY
By /s/ERIC R. MILLER
ERIC R. MILLER
KEITH E. GOODWIN
DONALD W. SELZER, JR.
1700 First National Bank
Building
Saint Paul, Minnesota 55101
Telephone: (612) 227-7271

Dated: May 8, 1979

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-74-Civil-659

LEON W. KNIGHT, et al,

Plaintiffs,

vs.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, et al,

Defendants.

Deposition of ROGER I. JOHNSON, taken before Virginia Ledford, a Notary Public in and for the County of Hennepin, State of Minnesota, on the 7th day of September, 1978, at 2200 Dain Tower, Minneapolis, Minnesota, commencing at 10:30 o'clock a.m.

[74] the State to get involved in that kind of an orgnization. Of course, all of the Community Colleges aren't really situated in every district so there was no way we could ever get Community College members into 134 districts. We have some districts where they don't.

Q. Who's the head of the 1340 Club?

A. As far as I know it's defunct or on somebody's back burner somewhere. Now I haven't heard from it. I don't know if it died, if it's ongoing. I don't know who's in charge.

Q. Does MCCFA have a corps of persons, whether or not formally organized, on which it can call on on short notice for political action when thought necessary?

A. MCCFA?

Q. Yes.

A. No.

Q. Does MEA have a nucleus of persons upon whom it can call on on short notice for political action?

A. It might in some areas, in some district out of the 134, but my guess is that maybe it's half a dozen, ten of them, maybe.

Q. Would these persons generally be the same from year after year?

A. I believe so.

Q. Does IMPACE make any effort to have contacts in each

[154] A. Mr. Bradbury is the current chairman of the Governmental Relations Council and as such has a seat on the IMPACE Board in the same sense that Michael Sokup had.

Q. In 1978, did Mr. Bradbury—I should say has Mr. Bradbury assisted teachers to get into political campaigns for elective office?

Mr. Selzer: Would you repeat the latter part of the question?

(Pending question read.)

The Witness: I guess that I would ask that the question be clarified. You're talking about volunteering?

Mr. Logie: Yes, to get involved.

Mr. Selzer: Working with committees rather than running for office?

By Mr. Logie:

Q. That's right.

A. I have no specific knowledge of efforts, if any, that Mr. Bradbury has made in that regard.

Q. Is Mr. Bradbury also involved in whatever remains of the 1340 club?

Mr. Selzer: I object to the question as assuming that something remains to the 1340 Club, and I'm not sure what sort of evidence is on the record concerning that.

[155] You may answer to the extent that you can.

The Witness: Well, my response yesterday was a response to your question about whether or not there might still be some individuals who at one time had identified themselves as members of the so-called 1340 Club, and could they be called upon at a moment's notice or short interval of time to perform some legislative or political function, and my response was that I wouldn't be a bit surprised if there were some areas in the state, a small number I suggested of 134 legislative districts where there still could be individuals that could be called on the telephone and we could ask to get involved in some manner.

I indicated yesterday that I haven't heard anything from the 1340 Club. I used the word "defunct" to describe it. There doesn't seem to be any action going on associated with an attempt to organize it, reorganize it or keep it going. If such action is ongoing, I'm unaware of it.

However, I would presume that in lieu of his position as Governmental Relations Council, if there were such action he would know about it.

By Mr. Logie:

Q. Okay. Do you know Susan Zagrabelny?

A. Yes.

(Caption)

Washington, D.C.
Friday, December 29, 1978

Deposition of

ALICE MORTON

a witness in the above-entitled matter, called for examination by counsel for the plaintiffs, pursuant to notice, taken in the office of the witness, National Education Association Building, 1201-16th Street, N.W., Washington, D.C., beginning at 9:00 a.m., before Linda M. Farmer, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

[78] Q. Did you show me all of the areas where you were aware that there would be materials relevant to this document request?

A. I did.

Q. And did I, before that, describe to you the type of request that we were concerned with?

A. Yes, and the date.

Q. And did you observe that Ms. Hanna and myself searched all the places that you designated?

A. Yes, and—I made sure you did.

Q. And can you think of any place that we did not look where you, based on your experience in the archives, would expect to find material relevant to this document request? Was there any place that we overlooked?

A. No, other than the materials, information that would be found in the Reporter, and Today Education, and News, NEA News.

Q. Publications?

A. Those materials which you explained to me, that the plaintiff already had had, that you explained, and also the NEA handbooks.

(Caption)

DEPOSITION OF NEIL FREDERICK SANDS, taken by the Plaintiffs, before George Manke, a Notary Public in and for the County of Hennepin, State of Minnesota, on Wednesday, June 14, 1978, at 2200 Dain Tower, Minneapolis, Minnesota, commencing at 1:00 o'clock p.m.

[69] 1340 Club meeting in St. Cloud and gave a COLA report."

What is the 1340 Club?

A. Well, I'm not sure it was ever formally structured into anything. The concept was to have a number of teachers, and the number tentatively was set at 10. These are MEA members who would be identified as being residents and political activists or potential political activists in each of the 134 legislative districts in the State of Minnesota involving both the senate district and the house district. The 134 would be house district, so that there would be a thousand three hundred and forty teachers if we had ten teachers in every one of the 134 legislative districts.

Q. And what was the purpose of identifying these individuals and bringing them together in this Club?

A. Well, there were a lot of ideas being kicked around. As I say, I don't think the concept ever got off the ground and was formalized. I am not aware that it exists now in any sort of structured way. It's a concept of having teachers identified in a legislative district.

As I say, many ideas were being kicked around at that time as to how we might utilize this structure, but the structure was never completed sufficiently to [70] become a reliable vehicle in any useful way.

Q. So you are not aware that at the present time that 1340 type organization exists within the MEA?

A. If it does, I'm not hearing about it. Did you say a 1340 type club, type of organization?

Q. Yes. Type of organization.

A. I'm not aware if the 1340 exists. Now, there is what we call a—I don't know if it even has a name. There are screening teams which meet with legislators and discuss educational issues with candidates and incumbents for political office.

Q. Have you participated in any of these screen teams?

A. Yes, I have.

Q. Did you do so in 1976?

A. Probably, yes.

Q. Have you done so this year?

A. No.

Q. In 1976, can you recall the individuals who participated with you in the screening program?

A. You understand my hesitancy is I'm not positive about the year. I'm positive I did participate in these.

Q. Well, in whichever year it was.

A. Okay. There were three or four. One was Rick Theisen. I believe his name is—the others escape my memory.

Q. After you had had discussions with these legislators

(Caption)

Fairfax, Virginia
Thursday, November 30, 1978

Deposition of

JEFFREY B. SAUNDERS

a witness, called for examination by counsel for the plaintiffs, pursuant to notice, taken in the offices of the National Right to Work Committee, 8316 Arlington Boulevard, Fairfax, Virginia, beginning at 9:00 a.m., before Carolyn M. Craig, a No-

tary Public in and for the State of Virginia at large, when were present on behalf of the respective parties:

[37] IMPACE's role is strictly funding. They solicit voluntary contributions from teachers; that there was a seven-member board who screened political candidates, came out with an endorsement of a particular candidate, and when the endorsement was in terms of funding, the majority of their time was spent on soliciting.

MEA's role, on the other hand, there was no active endorsement of a candidate in terms of taking a vote. They did come out in support of a candidate. By "support," they came out in articles in their own MEA newsletter, articles to the general press, in a concerted effort to organize the teachers behind a candidate.

Q. To work as volunteers in the campaign?

A. He didn't say those exact words. He said it was a concerted effort to coalesce the teachers into a powerful voting bloc.

I lost my train of thought.

Q. You said in the course of this conversation, he made some mention that his hands were tied with respect to organizing teachers.

A. Right. I said, "How do you go about organizing teachers?"

[38] He said, he, personally, couldn't do anything, that his hands had been tied, that because of the lawsuit with the National Right to Work Foundation, NEA's attorneys had advised him not to get involved.

Q. Now that's the phrase he used or term he used, "NEA's attorneys"?

A. Yes, he did.

Q. Advised him not to get involved in what?

A. On company time. He said as a consequence, he has had to work on behalf of Fraser on his own time, after 4:30 p.m. An then he told me that he organized the delegates in his own district, that he has worked the telephone tree. I mentioned to him I worked the telephone tree for Fraser. He told me he, himself, had worked the telephone tree on Wednesday, Sunday and Monday, he said.

Q. So he told you he had been in the telephone tree on Wednesday the 6th—

A. I wrote down the dates.

Q. —Sunday the 10th and Monday the 11th; is that right?

A. That's right.

And I said, "Well, that's a lot of work. Are you compensated for this?" He kind of laughed and said no.

APPENDIX F

(Caption)

ORDER FOR PRETRIAL

A pretrial conference in the above-entitled matter will be held on Friday, October 13, 1978 at 9:30 a.m. before the undersigned in Courtroom No. 4 at the Federal Courthouse, St. Paul, Minnesota. The purpose of the pretrial will be to permit all counsel to advise the undersigned as to the current status of discovery and preparation for trial, and to further schedule trial preparation proceedings and the method of presentation of the case to the court.

Dated: September 25, 1978.

DONALD D. ALSOP
United States District Judge

APPENDIX G

(Caption)

ORDER

The above-entitled action came on for hearing before the undersigned United States Magistrate Judge on December 20, 1978, pursuant to Defendant National Education Association's motions to quash subpoenas issued to Matthew Reese and Alice Morton.

Edwin Vieira, Jr. and William E. Mullin appeared on behalf of plaintiffs; Eric R. Miller and Donald W. Selzer, Jr., appeared on behalf of defendant.

IT IS HEREBY ORDERED that:

(Based upon all of the files herein, and upon the briefs and arguments of counsel)

1. Plaintiffs may take the deposition of Alice Morton, Archivist of the National Education Association (NEA), on either December 28 and 29, or December 29 and December 30, 1978, the exact dates to be selected by the attorneys for the defendant. If defendant's attorneys select December 29 and 30 for the date of her deposition, and the 30th is inconvenient for her, Morton's deposition may be continued to the next mutually convenient date. The location of the deposition shall be the NEA Building, 1201 16th Street, Washington, D.C.

2. Morton shall produce, in response to the subpoena served upon her, all documents in the NEA archives pertaining to the participation, from January 1972 to the present time, of the NEA or its affiliates, or their officials, staff personnel or members, concerning activities related to the campaigns of candidates for election to public office.

3. Since plaintiffs have been unable to serve process upon one Matthew Reese due to no fault on their part, the termination date for deposition discovery as to him is extended to Feb-

ruary 15, 1979. The deposition when taken will be in Washington, D.C. unless the parties agree to another mutually convenient place.

Dated: December 22, 1978

ROBERT G. RENNER
United States Magistrate

Filed Dec. 22, 1978, Harry A. Sieben, Clerk. By Cynthia Bentzer, Deputy.

APPENDIX H

RULE 3
PRETRIAL PROCEDURE

A. Generally

Each judge may prescribe such pretrial and discovery procedures as he may determine appropriate.

B. Interrogatories

Parties answering interrogatories under Fed.R.Civ.P. 33 or requests for admissions under Fed.R.Civ.P. 36 shall repeat the interrogatories or requests being answered immediately preceding the answers.

No party may serve more than a total of fifty (50) interrogatories upon any other party unless permitted to do so by the court upon motion, notice and a showing of good cause. Such motions shall be in writing setting forth the proposed additional interrogatories and the reasons establishing good cause for their use. In computing the total number of interrogatories, each subdivision of separate questions shall be counted as an interrogatory.

C. Pretrial Conferences

Each judge, on his own initiative, on motion of any party to an action, or by stipulation of the parties, may order the attorneys and the parties to appear for a pretrial conference to consider the subjects specified in Rule 16 of the Federal Rules of Civil Procedure or other matters determined by the judge.

The time of such conference shall be determined by the judge, and the clerk shall give reasonable notice to all parties to the action of the time for the conference.